

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

5 STATE OF OHIO) VOLUME I
6))
7 Plaintiff) SEARCH WARRANT
8) ARRAIGNMENT
9 - vs -) PRE-TRIAL MOTIONS
10) MOTIONS TO SUPPRESS
11 DONNA M. ROBERTS) WAIVER OF SPEEDY TRIAL
12))
13 Defendant)

14 BE IT REMEMBERED, that on December 20, 2001,
15 December 21, 2001, December 31, 2001, January 30, 2002,
16 July 18, 2002, October 10, 2002, January 2, 2003,
17 February 26, 2003, and March 26, 2003, these proceed-
18 ings came on to be heard before one of the Judges of
19 this Court, John M. Stuard, in Courtroom No. 2, on
20 High Street, Warren, Ohio, before the case heretofore
21 filed herein.
22

23 Mary Ann Mills, RPR
24 Official Court Reporter
25 Trumbull County, Ohio

A P P E A R A N C E S

On Behalf of the State of Ohio:
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On Behalf of the Defendant, Donna M. Roberts:
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On Behalf of WFMJ Television, Inc.:
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Youngstown, Oh 44503

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IN THE COURT OF COMMON PLEAS

TRUMBULL COUNTY, OHIO

TRIAL COURT CASE NO. 01-CR-793

SUPREME COURT OF OHIO CASE NO. 03-1441

STATE OF OHIO vs. DONNA M. ROBERTS

LIST OF TRIAL EXHIBITS

AND MITIGATION HEARING EXHIBITS

EXHIBITS FROM MOTION TO SUPPRESS HEARING

STATE'S EXHIBITS:

1. Consent to search form by D. Roberts Admitted

DEFENDANT'S EXHIBITS:

- | | |
|------------------------|----------|
| A. Property receipt | Admitted |
| B. List of medications | Admitted |

Exhibit No.	Description	Admitted
1	911 Tape	No objection
1A	911 Paper work	No Objection
2	Crime Scene Video	No objection
3	Crime Scene Diagram	No objection
4	Photo	No Objection
5	Photo	No Objection
6	Photo	No Objection
7	Photo	No Objection
8	Photo	No Objection
9	Photo	No Objection
10	Photo	No Objection
11	Photo	No Objection
12	Photo	No Objection
13	Photo	No Objection
14	Photo	No Objection
15	Photo	No Objection
16	Photo	No Objection
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63	Photo - Victim	Obj sustained
64	Bullet Recovered from Brain of Victim	No Objection
65	Bullet Recovered from Brain of Victim	No Objection
66	Clothes and Jewelry	No Objection
67	Photo X-Ray	No Objection
68	Photo Red's Jacket	No Objection
69	Tire Marks in Grass	No Objection
70	N. Side Exterior of House	No Objection
71	Front Exterior of House	No Objection
72	Rear Exterior of House	No Objection
73	S. Side Exterior of House	No Objection
74	Main Bathroom	No Objection
75	View of man door screen from house	No Objection
76	View of man door screen from garage	No Objection
77	Open Bedroom	No Objection
78	Clothing Open Bedroom	No Objection
79	Blood spatter peninsula	Withdrawn
80	Blood Spatters on wall by door	Withdrawn
81	Blood Spatters and smear	Withdrawn
82	Blood Spatters	Withdrawn
83	Inside Garage looking into residence	No Objection
84	Blood drops garage	No Objection
85	Garage	Withdrawn
86	Blood Spatters garage	No Objection
87	Overview garage	No Objection
88	Peninsula & Wall blood splatters	Withdrawn
89	Different view as in 88	Withdrawn
90	Blood Drops in garage	No Objection
91	Kitchen door closed	No Objection
92	Overview garage	No Objection
93	Back of man door w/ blood	No Objection
94	Interior side of man door	No Objection
95	Eye glasses and broken leg belt garage	No Objection
96	Eye glasses garage	No Objection
97	Stain wall ceiling	No Objection
98	Footprint dated 9-26-94	No Objection
99	Victim	No objection
100	Victim -back close up	No objection
101	Small key found under victim	No Objection
102	Overview Bedroom	No Objection
103	Bedroom master	No Objection
104	bedroom closet	No Objection
105	Photo	No Objection
106A	Photo	No Objection
106B	Photo	No Objection
106A	Photo	No Objection
107	Photo	No Objection
107A	photo	Withdrawn
108	Victim	No Objection
108A	Victim Face down	Withdrawn
109	Dry Wall Hole	No objection
109A	Victim face down	Withdrawn
110	Victim in Kitchen	No Objection
111	Victim lower torso	Withdrawn
112	Victim Footprints w/ small dots	Withdrawn
113	Shirts	No Objection
114	Shirts	No Objection
115	Shirts	No Objection
116	Living Room	No Objection
117	Living Room	No Objection

117	Living Area	No Objection
118	Office Area	No Objection
120	Office Area	No Objection
124	Office Area	No Objection
122	Front Door Looking In	No Objection
123	Dining Room - Orioles Jacket	No Objection
124	Office Area w/ ball cap	No Objection
125	Dry Wall Hole	No Objection
126	Front View of Car	No Objection
127	Left rear view of car	No Objection
128	Left view of car	No Objection
130	Garage door & Driver door	No Objection
130	Family Room - overview	No Objection
131	Table w/ 3 roaches	No Objection
132	Garage w/ view of Gun	No Objection
133	Blood Drops in garage	Withdrawn
134	Overview - Office	No Objection
135	Kitchen - Door	Withdrawn
136	Open Door, Kitchen area	Withdrawn
137	Kitchen - receipt Walmart 8:30 p.m.	No Objection
138	Stainless Steel Revolver	No Objection
139	Close - up Footprint & Garage	No Objection
140	Stairwell & Basement	No Objection
141	Stairwell & Basement	No Objection
142	Cabinet	No Objection
143	Close - Up Cabinet	No Objection
144	Kitchen - Different View	No Objection
145	Pier One Import Bag w/ wine glasses	No Objection
146	Front View of Car	No Objection
147	Rt Side View of Car	No Objection
148	Rear view of Car	No Objection
149	Left Side view of Car	No Objection
153	Double Lined Bag "Nate Jackson"	No Objection
154	Receipt - Pier One Import - Lorain Rd	No Objection
152	Assorted Candy, toothpaste	No Objection
158	Customer Receipt	No Objection
151	Handcuff Box w/ key - no cuffs	No Objection
155	Hair Comb	No Objection
156	Front View of Car	No Objection
157	Rear view of Car	No Objection
158	Wide Angle Rear of Car	Withdrawn
159	Rt Side View of Car	No Objection
160	Front View of Car - Left Corner	No Objection
161	Rear view of Car - Damage to Bumper	Withdrawn
162	Front View of Car	No Objection
163	Exterior to Interior - Blood Smears	No Objection
164	Visor Area	No Objection
165	Interior area above head w/ blood	No Objection
166	Exterior	No Objection
167	Front Driver Seat	Withdrawn
168	Visor Area - Removed	No Objection
169	Door Handle	No Objection
170	Door Handle w/ blood	No Objection
171	Driver side visor clamp	No Objection
172	Front Passenger Seat - Cell Phone	No Objection
173	Front Passenger Seat - Cell Phone	No Objection
174	Interior - Left Console	No Objection
175	Interior w/ Blood Smear	No Objection
176	Journal	Withdrawn
177	Frank Guay	No Objection
178	Keys in Ignition	No Objection
179	Rt Interior Headrest	No Objection

180	Driver Side Console	No Objection
181	Passenger Side Dashboard	No Objection
182	Passenger side door - interior	No Objection
183	Driver side door - interior	No Objection
184	Left side of car w/ dashboard	No Objection
185	Rt side back seat	No Objection
186	Front driver compartment	No Objection
187	Exterior thru rear left door	No Objection
188	Keys	Withdrawn
189	Golf Phone	Withdrawn
190	Keys - Blue Matt	Withdrawn
191	Driver side - release button	No Objection
192	Wagon Wheel Photo	No objection
193	Wagon Wheel Photo	No objection
194	Wagon Wheel Photo	No objection
195	Wagon Wheel Photo	No objection
196	Wagon Wheel Photo	No objection
197	Photograph Items Recovered Days Inn	No objection
198	Photo of Chrysler	No objection
199	Days Innn Photographs	No objection
200	Days Innn Photographs	No objection
201	Days Innn Photographs	No objection
202	Days Innn Photographs	Objection Sustained
203	Days Innn Photographs	No objection
204	Days Innn Photographs	Objection Sustained
205	Days Innn Photographs	No objection
206	Days Innn Photographs	No objection
207	Days Innn Photographs	No objection
208	Days Innn Photographs	No objection
209	Days Innn Photographs	No objection
210	Days Innn Photographs	No objection
211	Days Innn Photographs	No objection
212	Days Innn Photographs	No objection
213	Days Innn Photographs	No objection
214	Days Innn Photographs	No objection
215	Days Innn Photographs	No objection
216	Days Innn Photographs	No objection
217	Days Innn Photographs	No objection
218	Days Innn Photographs	No objection
219	Days Innn Photographs	No objection
220	Days Innn Photographs	No objection
221	Days Innn Photographs	No objection
222	Days Innn Photographs	No objection
223	Days Innn Photographs	No objection
224	Days Innn Photographs	No objection
225	Days Innn Photographs	No objection
226	Days Innn Photographs	No objection
227	Photographs of Wirt Street	No objection
228	Photographs of Wirt Street	No objection
229	Photographs of Wirt Street	No objection
230	Photographs of Wirt Street	No objection
231	Photographs of Wirt Street	No objection
232	Photographs of Wirt Street	No objection
233	Wirt Street Photographs	No objection
234	Wirt Street Photographs	No objection
235	Front view - Nate Jackson	No Objection
236	Rear view Nate Jackson	No Objection
237	Full body shot	No Objection
238	Rt arm and hand	No Objection
239	Front view - Nate Jackson	No Objection
240	Left & Rt knees	No Objection
241	View of Hands & Wound	No Objection

271D	Letters From Donna to Nate	
271D1	12/03/01	Admitted
271D2	11/29/01	Admitted
271D3	11/29/01	Admitted
271D4	11/28/01	Admitted
271D5	11/28/01	Admitted
271D6	11/27/01	Admitted
271D7	11/27/01	Admitted
271D8	11/26/01	Admitted
271D9	11/25/01	Admitted
271D10	11/24/01	Admitted
271D11	11/23/01	Admitted
271D12	11/23/01	Admitted
271D13	11/22/01	Admitted
271D14	11/22/01	Admitted
271D15	11/22/01	Admitted
271D16	11/22/01	Admitted
271D17	11/21/01	Admitted
271D18	11/21/01	Admitted
271D19	11/20/01	Admitted
271D20	11/20/01	Admitted
271D21	11/20/01	Admitted
271D22	11/20/01	Admitted
271D23	11/19/01	Admitted
271D24	11/19/01	Admitted
271D25	11/19/01	Admitted
271D26	Empty	Admitted
271D27	11/16/01	Admitted
271D28	11/16/01	Admitted
271D29	11/15/01	Admitted
271D30	Empty	Admitted
271D31	11/12/01	Admitted
271D32	11/10/01	Admitted
271D33	11/10/01	Admitted
271D34	11/10/01	Admitted
271D35	11/10/01	Admitted
271D36	11/09/01	Admitted
271D37	11/09/01	Admitted
271D38	11/09/01	Admitted
271D39	11/09/01	Admitted
271D40	11/08/01	Admitted
271D41	11/08/01	Admitted
271D42	11/08/01	Admitted
271D43	11/07/01	Admitted
271D44	11/07/01	Admitted
271D45	11/07/01	Admitted
271D46	11/07/01	Admitted
271D47	Empty	Admitted
271D48	11/06/01	Admitted
271D49	11/06/01	Admitted
271D50	Empty	Admitted
271D51	11/05/01	Admitted
271D52	11/05/01	Admitted
271D53	11/03/01	Admitted
271D54	11/03/01	Admitted
271D55	11/02/01	Admitted
271D56	11/02/01	Admitted
271D57	11/02/01	Admitted
271D58	11/01/01	Admitted
271D59	11/01/01	Admitted
271D60	Halloween card	Admitted
271D61	11/01/01	Admitted

271D62		10/30/01	Admitted
271D63		10/29/01	Admitted
271D64		10/29/01	Admitted
271D65		10/28/01	Admitted
271D66		10/27/01	Admitted
271D67		10/26/01	Admitted
271D68		10/26/01	Admitted
271D69		10/25/01	Admitted
271D70		10/25/01	Admitted
271D71		10/25/01	Admitted
271D72		10/24/01	Admitted
271D73		10/24/01	Admitted
271D74		10/23/01	Admitted
271D75		10/23/01	Admitted
271D76		10/23/01	Admitted
271D77		10/23/01	Admitted
271D78		10/22/01	Admitted
271D79	Empty		Admitted
271D80		10/21/01	Admitted
271D81		10/20/01	Admitted
271D82		10/20/01	Admitted
271D83		10/20/01	Admitted
271D84		10/20/01	Admitted
271D85		10/19/01	Admitted
271D86		10/19/01	Admitted
271D87		10/19/01	Admitted
271D88		10/19/01	Admitted
271D89		10/18/01	Admitted
271D90	Empty		Admitted
271D91		10/18/01	Admitted
271D92		10/17/01	Admitted
271D93		10/16/01	Admitted
271D94		10/16/01	Admitted
271D95		10/15/01	Admitted
271D96		10/15/01	Admitted
271D97		10/15/01	Admitted
271D98		10/13/01	Admitted
271D99		10/13/01	Admitted
271D100		10/13/01	Admitted
271D101		10/12/01	Admitted
271D102		10/12/01	Admitted
271D103		10/12/01	Admitted
271D104	Empty		Admitted
271D105		10/12/01	Admitted
271D106		10/12/01	Admitted
271D107		10/11/01	Admitted
271D108		10/11/01	Admitted
271D109		10/11/01	Admitted
271D110		10/10/01	Admitted
271D111		10/10/01	Admitted
271D112		10/10/01	Admitted
271D113		10/08/01	Admitted
271D114		10/08/01	Admitted
271D115		10/06/01	Admitted
271D116		10/06/01	Admitted
271D117		10/06/01	Admitted
271D118		10/05/01	Admitted
271D119		10/05/01	Admitted
271D120		10/05/01	Admitted
271D121		10/05/01	Admitted
271D122		10/05/01	Admitted

271D124		10/05/01	Admitted
271D125		10/04/01	Admitted
271D126		10/04/01	Admitted
271D127		10/02/01	Admitted
271D128		10/02/01	Admitted
271D129		10/02/01	Admitted
271D130	Unknown		Admitted
271D131	Unknown		Admitted
271D132	Unknown		Admitted
271D133	Unknown		Admitted
271D134	Unknown		Admitted
271D135	Unknown		Admitted
271D136	Unknown		Admitted
271D137	Unknown		Admitted
271D138	Unknown		Admitted
271D139		11/26/01	Admitted

273N	Letters from Nate to Donna	Admitted
273N1	12/01/01	Admitted
273N2	11/30/01	Admitted
273N3	11/29/01	Admitted
273N4	11/28/01	Admitted
273N5	11/27/01	Admitted
273N6	11/26/01	Admitted
273N7	11/25/01	Admitted
273N8	11/23/01	Admitted
273N9	11/22/01	Admitted
273N10	11/20/01	Admitted
273N11	11/19/01	Admitted
273N12	11/17/01	Admitted
273N13	11/16/01	Admitted
273N14	11/14/01	Admitted
273N15	11/14/01	Admitted
273N16	11/13/01	Admitted
273N17	11/12/01	Admitted
273N18	11/12/01	Admitted
273N19	11/10/01	Admitted
273N20	11/09/01	Admitted
273N21	11/07/01	Admitted
273N22	11/06/01	Admitted
273N23	11/08/01	Admitted
273N24	11/05/01	Admitted
273N25	11/03/01	Admitted
273N26	11/01/01	Admitted
273N27	11/01/01	Admitted
273N28	10/31/01	Admitted
273N29	10/30/01	Admitted
273N30		Admitted
273N31	10/28/01	Admitted
273N32	10/27/01	Admitted
273N33		Admitted
273N34	10/25/01	Admitted
273N35	10/25/01	Admitted
273N36	10/25/01	Admitted
273N37	10/24/01	Admitted
273N38	10/23/01	Admitted
273N39	10/22/01	Admitted
273N40	10/21/01	Admitted
273N41	10/21/01	Admitted
273N42	10/20/01	Admitted
273N43	10/19/01	Admitted
273N44	10/18/01	Admitted
273N45	10/17/01	Admitted
273N46	10/16/01	Admitted
273N47	10/16/01	Admitted
273N48	10/15/01	Admitted
273N49	10/14/01	Admitted
273N50	10/12/01	Admitted
273N51	10/10/01	Admitted
273N52	10/10/01	Admitted
273N53	10/08/01	Admitted
273N54	10/05/01	Admitted
273N55	10/07/01	Admitted
273N56	10/04/01	Admitted
273N57	10/04/01	Admitted
273N58	10/02/01	Admitted
273N59	10/01/01	Admitted
273N60	10/01/01	Admitted
273N61	09/30/01	Admitted

273N62		09/27/01	Admitted
273N63		09/27/01	Admitted
273N64		07/12/01	Admitted
273N65		06/28/01	Admitted
273N66		06/09/01	Admitted
273N67		05/18/01	Admitted
273N68		05/15/01	Admitted
273N69		05/12/01	Admitted
273N70		05/10/01	Admitted
273N71		05/09/01	Admitted
273N72		05/06/01	Admitted
273N73		05/04/01	Admitted
273N74		05/03/01	Admitted
273N75		04/28/01	Admitted
273N76		02/24/01	Admitted
273N77		04/23/01	Admitted
273N78		04/22/01	Admitted
273N79		04/19/01	Admitted
273N80		04/16/01	Admitted
273N81		04/16/01	Admitted
273N82		04/15/01	Admitted
273N83		04/11/02	Admitted
273N84		04/10/01	Admitted
273N85		04/10/01	Admitted
273N86		04/09/01	Admitted
273N87		04/08/01	Admitted
273N88		04/04/01	Admitted
273N89		04/02/01	Admitted
273N90	Unknown		Admitted
273N91		03/31/01	Admitted
273N92		03/29/01	Admitted
273N93		03/26/01	Admitted
273N94		03/25/01	Admitted
273N95		03/23/01	Admitted
273N96		03/22/01	Admitted
273N97		03/20/01	Admitted
273N98		03/20/01	Admitted
273N99		03/20/01	Admitted
273N100		03/19/01	Admitted
273N101		03/19/01	Admitted
273N102		03/19/01	Admitted
273N103		03/19/01	Admitted
273N104		03/15/01	Admitted
273N105		03/13/01	Admitted
273N106		03/12/01	Admitted
273N107		03/11/01	Admitted
273N108		03/09/01	Admitted
273N109		03/06/01	Admitted
273N110		03/04/01	Admitted
273N111		03/03/01	Admitted
273N112		03/02/01	Admitted
273N113		02/27/01	Admitted
273N114		02/25/01	Admitted
273N115		02/20/01	Admitted
273N116		02/23/01	Admitted
273N117		02/22/01	Admitted
273N118		02/19/01	Admitted
273N119		02/16/01	Admitted
273N120		02/15/01	Admitted
273N121	Unknown		Admitted
273N122		02/13/01	Admitted
273N123		02/12/01	Admitted

273N124		02/09/01	Admitted
273N125		02/07/01	Admitted
273N126		02/04/01	Admitted
273N127		02/01/01	Admitted
273N128		02/01/01	Admitted
273N129		01/26/01	Admitted
273N130		01/19/01	Admitted
273N131		01/17/01	Admitted
273N132		01/21/01	Admitted
273N133		01/16/01	Admitted
273N134		01/12/01	Admitted
273N135		01/05/01	Admitted
273N136		01/01/01	Admitted
273N137		12/27/00	Admitted
273N138		12/27/00	Admitted
273N139	Unknown		Admitted
273N140		12/11/00	Admitted
273N141	Unknown		Admitted
273N142	Unknown		Admitted
273N143		05/01/01	Admitted

242	Left Hand - Wound	No Objection
243	Front view w/ bandage	No Objection
244	Side view Finger	No Objection
245	Left Hand - wrist to finger tip	No Objection
246	Left Hand Palm up	No Objection
247	Back side of Hand	No Objection
248	Both Hands	No Objection
249	Head and Shoulders	Admitted over Obj
250	Full body shot	Objection Sustained
251	Handgun - .38 Taurus	No Objection
252	Five (5) Live Rounds from Taurus	No Objection
252A	Envelope Containing Test Fire Rounds	No Objection
253	Right Eye glass Lens	No Objection
254	Eye glasses Missing Right Lens	No Objection
255	Colton Swab - Front Door Hallway	No Objection
256	Dry Wall Cut out w/ Bullet Hole	No Objection
257	Bullet Recovered from Dry Wall	No Objection
258	Cincinnati Red's Jacket - From Victim	No Objection
259	Bullet Recovered from Clothing of Victim	No Objection
260	Death Certificate	No Objection
261	Coroner's Verdict	No Objection
262	Autopsy Protocol - 11 pages	No Objection
263	Microscopic Examination	No Objection
264	Toxicology - 1 page Front and Back	No Objection
264A	Radiology Report	No Objection
265	Blood - Drawn from Robert Flingerhut	No Objection
266	Bullet Recovered from Brain of Victim	No Objection
267	Driver's Side Visor	No Objection
268	Visor Clamp	No Objection
269	Keys Recovered from Ignition	No Objection
270	Bag Containing Letters	No Objection
271	Letters from Donna to Nate (See attached)	No Objection
272	No Exhibit	
273	Letters from Nate to Donna (See Attached)	No Objection
274	No Exhibit	
275A	Hand Writing Analysis	No objection
275B	Hand Writing Analysis	No objection
276A	Hand Writing Standard	No Objection
276B	Hand Writing Standard	No Objection
276C1	OGA Records	No Objection
276C2	OGA Records	No Objection
276C3	OGA Records	No Objection
276C4	OGA Records	No Objection
276C5	OGA Records	No Objection
276C6	OGA Records	No Objection
276C7	OGA Records	No Objection
276C	Hand Writing Standard	No Objection
276C4	Prison Records	No Objection
276C2	Prison Records	No Objection
276C3	Prison Records	No Objection
276C4	Prison Records	No Objection
277	01-35755 - Two (2) pages	No Objection
278	01-35755 - A	No Objection
279	01-35755-B	Obj sustained
280	01-35755-C	No Objection
281	01-35755-D	Admitted over Obj
282A	01-35755 - Mike Roberts (2) Pages	No Objection
282B	01-35755 - Mike Roberts Supplemental	No Objection
282C	01-35755 - Mike Roberts Supplemental	No Objection
283	01-35755 - Cindy Maylee (2) Pages	No Objection
284	Dale Laux - (2) Pages	No Objection

286A	Brenda Gerardi (3) Pages	No Objection
286B	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286C	Brenda Gerardi Supplemental 1 Corrected (2) Pages	No Objection
286D	Brenda Gerardi Supplemental 2 - (3) Pages	No Objection
287	Black Bag With Three (3) Bunches of Swabs	Withdrawn
287A	Box Containing Blood Swab - Days Inn	No objection
287B	Box Containing Blood Swab - Days Inn	No objection
287C	Box Containing Blood Stain - Days Inn	No objection
288	Wash Cloth - Days Inn - Days Inn	No objection
289	Hand Towel - Days Inn	No objection
290	Tape Lifts - Hairs Toilet	No objection
291	Finger Print Cards - Jennifer Robinson	No objection
292	White Stain Masking from Dumpster	Withdrawn
293	Dish Cloth - From Dumpster	Withdrawn
294	Dressing from Dumpster	No Objection
295	Dressing from Dumpster	Withdrawn
296	Dressing and Tape from Dumpster	Withdrawn
297	White Stain Masking	Withdrawn
298	Stained White Wash Cloth	Withdrawn
299	One (1) Condom	Withdrawn
300	One (1) Condom	Withdrawn
301	Hydrogen Peroxide Bottle	Withdrawn
302	Empty Package for Bandage	Withdrawn
303	Empty First Aid Tape Box	Withdrawn
304	Empty Bandage Roll	Withdrawn
305	Empty First Aid Sponge Package	Withdrawn
306	Empty First Aid Sponge Package	Withdrawn
307	Empty First Aid Sponge Package	Withdrawn
308	Empty First Aid Sponge Package	Withdrawn
309	Empty Days Inn Room Key Card Enevelope #29	No Objection
310	Empty Days Inn Room Key Card Enevelope #128 w/ Towel	Withdrawn
311	Envelope Containing Receipts	No objection
311A	Check Inn	No objection
311B	Credit Card Receipt	No objection
311C	Register Audit	No objection
311D	Phone Log	No objection
311E	Credit Card Receipt	No objection
312	Check Inn	No Objection
313	Photographic Line -Up Jose Flores	No Objection
314	Evevelope Continaing Guest Log (5) pages	No Objection
314A	Guest Log	No Objection
314B	Guest Log	No Objection
314C	Guest Log	No Objection
314D	Guest Log	No Objection
314E	Final Bill	No Objection
315	Guest Check	No Objection
316	Photographic Line - Up Jill Kenyon	No Objection
317	Black Gloves	No Objection
318	Black & Red Nike Tennis Shoes	No Objection
319	Composite Video Tape	No objection
320	Envelope Containing 3 Photos	Admitted over Obj
320A	1 X 5 Black and White Photo	Objection Sustained
320B	1 X 5 Black and White Photo	Objection Sustained
320C	1 X 5 Color Photo	Objection Sustained
320D	4 X 5 Color Photo	No objection
320E	1/2 X 11 Photo	Withdrawn
320F	1/2 X 11 Photo	Withdrawn
320G	1/2 X 11 Photo	Withdrawn
320H	1/2 X 11 Photo	Withdrawn
320I	1/2 X 11 Photo	No objection
321	Dobson Communication Phone Records 17 pages	No objection
322	\$250,000 - ZurichLife Insurance Policy 24 pages	No objection

323	\$300,000 - State Farm Insurance Policy 17 pages	No objection
324	Constitutional Rights Waiver	No Objection
325	Video Tape Confession	No Objection
326	Transcript of Video Tape Confession 88 Pages	No Objection
327A	Certification - ATF - 1page	No objection
327B	Taurus IL46854 - 2 pages	No objection
327C	Taurus JH14188 - 1 page	No objection
360	Cd containing 19 Telephone Conversations	No Objection
361	Telephone Log Record 3 pages	Adm. over obj
362	Audio Tape of 10-05-01 Recording	No Objection
362A	Transcript of 10-05-01 Recording	No Objection
363	Audio Tape of 10-25-01 Recording	No Objection
363A	Transcript of 10-25-01 Recording	No Objection
364	Audio Tape of 10-27-01 Recording	No Objection
364A	Transcript of 10-27-01 Recording	No Objection
365	Audio Tape of 11-03-01 Recording	No Objection
365A	Transcript of 11-03-01 Recording	No Objection
366	Audio Tape of 11-08-01 Recording	No Objection
366A	Transcript of 11-08-01 Recording	No Objection
367	Audio Tape of 11-10-01 Recording	No Objection
367A	Transcript of 11-10-01 Recording	No Objection
368	Audio Tape of 11-11-01 Recording	No Objection
368A	Transcript of 11-11-01 Recording	No Objection
369	Audio Tape of 11-15-01 Recording	No Objection
369A	Transcript of 11-15-01 Recording	No Objection
370	Audio Tape of 11-17-01 Recording	No Objection
370A	Transcript of 11-17-01 Recording	No Objection
371	Audio Tape of 11-22-01 Recording	No Objection
371A	Transcript of 11-22-01 Recording	No Objection
372	Audio Tape of 11-24-01 Recording	No Objection
372A	Transcript of 11-24-01 Recording	No Objection
373	Audio Tape of 11-24-01 Recording	No Objection
373A	Transcript of 11-24-01 Recording	No Objection
374	Audio Tape of 11-25-01 Recording	No Objection
374A	Transcript of 11-25-01 Recording	No Objection
375	Audio Tape of 11-29-01 Recording	No Objection
375A	Transcript of 11-29-01 Recording	No Objection
376	Audio Tape of 12-01-01 Recording	No Objection
376A	Transcript of 12-01-01 Recording	No Objection
377	Audio Tape of 12-02-01 Recording	No Objection
377A	Transcript of 12-02-01 Recording	No Objection
379	Audio Tape of 12-06-01 Recording	No Objection
379A	Transcript of 12-06-01 Recording	No Objection
380	Audio Tape of 12-08-01 Recording	No Objection
380A	Transcript of 12-08-01 Recording	No Objection
381	Audio Tape of 12-08-01 Recording	No Objection
381A	Transcript of 12-08-01 Recording	No Objection
340	Photographic Line Up - Frank Reynolds	Not introduced
350	Consent to Search - Wirt Street - Shelia Fields	No Objection
351	(2) two cotton tipped swabs	No Objection
352	Search Warrant for Oral Swabs and Photographs	Withdrawn
385	Swabs	No Objection
386	Swabs	No Objection
387	Swabs	No Objection
388	Swabs	No Objection
389	Swabs	No Objection
390	Gerardi - Cutting	No Objection
391	Envelope Containing Jackson Prints	No Objection
391A	Jackson Prints	No Objection
392	Photograph - Lifts	No Objection
393	Photograph - Lifts	No Objection
394	Envelope Containing 2 Photos	No Objection

395	Envelope Containing Lift Sheets	No Objection
395A	Lift Sheets	No Objection
395B	Lift Sheets	No Objection
396	Walmart Receipt	No objection
397	Audio Tape of Excerpts	withdrawn
397A	Transcript of Audio Tape Excerpts	withdrawn
398	Preston Automobile Service Records Red Chrysler	No objection
398 A-P	Preston Automobile Service Records Red Chrysler	No objection
399	Preston Automobile Service Records Silver Chrysler	No objection
399 A-J	Preston Automobile Service Records Silver Chrysler	No objection
400	Framball County Recorder 104 Olive Street	Admitted over Obj
400 A-C	Framball County Recorder 104 Olive Street	Admitted over Obj
401	Framball County Recorder Washington Street	Admitted over Obj
401 A-D	Framball County Recorder Washington Street	Admitted over Obj
402	Framball County Recorder Fonderlue	Admitted over Obj
402 A-F	Framball County Recorder Fonderlue	Admitted over Obj
403A-403J	Defendant's School Records	No Objection
Defendant's Exhibits		
Def A	Def's Criminal History	No Objection
Def B	Contains 9 Subparts of Blood Swabs	No Objection
Def C	Credit Application	No Objection
Def D	BMV Registration Card	No Objection
Def E	Sales Agreement	No Objection
Def F	Lease Agreement	No Objection
Def G	Car Registration	No Objection
Def H	Credit Application	No Objection
Def I	BMV Registration Card	No Objection
Def M	Real Estate Records	No Objection
Def N	Real Estate Records	No Objection
Def O	Real Estate Records	No Objection
Def P	Psychological Report	No Objection
Joint 1	Fingerhut Jewelry	No Objection
Court Exhibit 1	Orientation Instructions	
Court Exhibit 2	Exhibit List	
Court Exhibit 3	Brief in Opposition to Acquittal	
Court Exhibit 4	Jury Charge	
Court Exhibit 5	Corrected Instruction	
Court Exhibit 6	Jury Question	
Court Exhibit 7	Penalty Instruction	

STATE'S EXHIBITS:

378.	Audio tape	No objection
378A.	Transcript	No objection
309A.	Days Inn envelope	No objection
403.	Photos (D. Roberts)	No objection
404.	Wallet	No objection
405.	Wallet	No objection
406.	Greyhound video	No objection
407.	Key	No objection
408.	Key tag	No objection

DEFENDANT'S EXHIBITS

- | | |
|---------------------------|--------------|
| 1. Photo | No objection |
| 2. Photo | No objection |
| 3. Photo | No objection |
| 4. Photo | No objection |
| 5. Consent to Search form | No objection |
| 6. Consent to Search form | No objection |
| A. Yellow shirt | |

JOINT EXHIBIT NO. 1 Photos

COURT'S EXHIBITS:

1. Jury verdict form
- 1A. Court's answer to jury question
2. Jury questions
- 2A. Court's answer to jury question
3. Jury question
- 3A. Court's answer to jury question
4. Jury question
- 4A. Court's answer to jury question
5. Jury question

SENTENCING EXHIBIT "A" (sealed by the Court)

1 DECEMBER 20, 2001, AT 6:05 P.M.

2 IN-CHAMBERS

3
4 THE COURT: For the record, it is
5 about 6:05 p.m., December 20, 2001. I have been
6 requested to make myself available by Dennis
7 Watkins, County Prosecutor, for purposes of a matter
8 for which I have, as a result thereof, have been
9 given certain information by way of primarily
10 letters that appear to have been written between one
11 Donna Marie Roberts and Nathaniel E. Jackson over a
12 period of the last several months or years. At this
13 time, Mr. Watkins and Detective Sergeant Monroe,
14 please raise your hand.

15
16 (Whereupon, Mr. Watkins & Detective Monroe were
17 sworn by the Court.)
18

19 THE COURT: I have reviewed this
20 information to see whether or not there is probable
21 cause to permit the filing of a complaint by the
22 Prosecuting Attorney upon affidavit. Would you be
23 kind enough, Mr. Monroe or Detective Sergeant

1 Monroe, you have reviewed that affidavit which you
2 have presented to me and which you have written and
3 caused to be prepared?

4 DETECTIVE MONROE: Yes, I have.

5 THE COURT: And what is contained
6 therein is true to the best of your knowledge from
7 the evidence that you have gathered in working on
8 this case the last couple of days?

9 DETECTIVE MONROE: Yes, it is.

10 THE COURT: And although apparently
11 it does not intend to state all of the evidence
12 because a lot of it hasn't been developed yet, you
13 have, in talking with various persons and what's
14 contained in and reviewing these articles and some
15 of which have been shown to me, have come to the
16 conclusion in your mind, after consultation with the
17 Prosecutor, that this matter should be presented to
18 a Judge on the basis of there being sufficient
19 probable cause to file the warrant?

20 DETECTIVE MONROE: Yes.

21 THE COURT: Okay, would you be kind
22 enough to sign that?

23

1 (Whereupon, the Affiant, Detective Sergeant Paul
2 Monroe signed the affidavit.)

3

4 ATTY. WATKINS: If the Court
5 please, I am going to have Detective Sergeant Monroe
6 also sign copies of the Affidavit for Arrest,
7 Warrant for Arrest, Howland Police Department and
8 the Prosecutor's Office.

9 THE COURT: Okay, I am accepting
10 the affidavit and after reviewing it and speaking
11 with Detective Monroe, and Detective Monroe affixing
12 his name to it, having been sworn prior to signing.
13 And do you have anything further Prosecutor Watkins?

14 ATTY. WATKINS: I understand
15 further, Judge, you have found probable cause from
16 the many pages of the letters, and the record speaks
17 for itself, and the affidavits speak for itself.

18 THE COURT: There is no question,
19 if I have ever reviewed a case, there does appear to
20 be probable cause and surely this fits that bill and
21 there is more than sufficient probable cause to
22 execute the arrest warrant. What happens thereafter
23 is another matter, but there is sufficient probable

1 cause.

2 ATTY. WATKINS: And we are also
3 requesting that the warrant be issued for their
4 arrest, to wit, the arrest of Donna Marie Roberts
5 and Nathaniel E. Jackson, and we also request for
6 the Court to sign an order sealing the record until
7 the arrest of both of these individuals.

8 THE COURT: That motion will be
9 granted. The motion will be sealed and the warrant
10 to be served and that record will not be opened
11 without permission of the Court. I am also signing
12 the warrants as prepared, the complaints that have
13 been duly signed by the Prosecutor, Dennis Watkins,
14 who has been previously sworn before signing. And I
15 am also signing the warrant to arrest. And I am
16 signing the motion and order to seal the record
17 until the warrants are executed. Check it, I think
18 I got everything.

19 ATTY. WATKINS: Paul, you know you
20 have the original and you will serve the Defendants
21 the warrant and you will make a return on the
22 original and bring it to the Court. And I am going
23 to request, Your Honor, if possible, to have the

1 Court seal the affidavit and have it kept in its own
2 secure room or assigned by the court reporter to
3 seal the envelope and not file it with the Clerk of
4 Courts until both are arrested.

5 THE COURT: That will be fine.
6 Should we not have a date issuing on the warrant?

7 ATTY. WATKINS: Yes, that should
8 be.

9 THE COURT: For the record, I am
10 going to instruct the court reporter to retain under
11 seal all the information here other than the
12 original warrant, which will be issued to the
13 police. And that once you have been notified that a
14 return is made on that, please properly file it with
15 the Clerk of Court's Office.

16 ATTY. WATKINS: And the complaint
17 and warrant are sealed along with the affidavits
18 correct, Judge?

19 THE COURT: Correct.

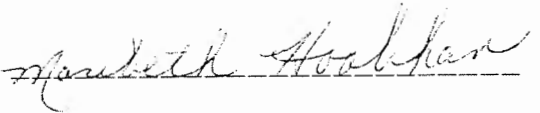
20 ATTY. WATKINS: After both have
21 been arrested.

22
23 (End of proceedings at 6:20 p.m.)

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REPORTER'S CERTIFICATE

This is to certify the foregoing represents a true and correct copy of the proceedings had in the aforementioned cause as reflected by the stenotype notes taken by me on the same.



DATE: September 10, 2002 Maribeth Hoolihan

Official Court Reporter

1 FRIDAY, DECEMBER 21, 2001; In Open Court:

2 THE COURT: Mr. Consoldane, do you
3 want to bring your client up here, please? Mr.
4 Consoldane, has your client received a copy of the
5 Complaint?

6 ATTY. CONSOLDANE: Yes, Your Honor.
7 Mr. Jackson has received a copy of the Complaint.
8 He was served with that earlier today at the county
9 jail. He understands it and waives any further
10 reading in Open Court. He would like to enter a
11 plea of not guilty and request that reasonable bond
12 be set.

13 THE COURT: This plea of not guilty
14 will be entered on your client's behalf. The
15 Prosecution wish to speak to the issue of bond?

16 ATTY. WATKINS: Yes, Your Honor.
17 The charges are Aggravated Murder with second count
18 of Aggravated Burglary. We believe the evidence
19 presented shows that this is a potential capital
20 case and we request under the circumstances as
21 presented to the Court and in the affidavit, that
22 no bond be set.

1 THE COURT: This Court has had
2 occasion in the issuance of the Complaint to review
3 some of the State's evidence and I've made a
4 finding of probable cause to file a Complaint. I
5 believe that there is good and sufficient evidence
6 that as to the filing of this charge, that I would
7 not set a bond at the present time due to the
8 seriousness of the charges. Your client has a
9 right to a preliminary hearing. I would ask you to
10 get together with the Prosecutor and pick an
11 appropriate date within that time frame permitted
12 by statute. Anything else, Mr. Consoldane?

13 ATTY. CONSOLDANE: Yes, Your Honor.
14 Earlier today the Prosecutor approached me and
15 asked about giving consent to look at Mr. Jackson's
16 finger. They said they wanted to remove the
17 bandage and take pictures of it. I said that we
18 would not give consent to that, and he said that
19 would be fine, that he would get a search warrant.
20 Well, I was talking with Mr. Jackson and the
21 Sheriff's department had already done that without
22 a search warrant. They had already removed his

1 band-aid and took pictures of his finger. I would
2 just request the Court to instruct the Prosecutor
3 and the Sheriff's department to not take any
4 further evidence from Mr. Jackson without first
5 obtaining a search warrant. We unilaterally
6 disagreed with any type of consent, and I think
7 that's not proper and they shouldn't be allowed to
8 do this.

9 THE COURT: Well, you will have the
10 appropriate time to enter any objections you have
11 to any of the procedures used. We have a very
12 capable, in my opinion, law enforcement personnel
13 around, and I think that they are well aware that
14 anything of that nature has to be obtained either
15 with the consent or by a search warrant. I'm sure
16 that Mr. Watkins will see that everything is done
17 in an appropriate manner.

18 ATTY. WATKINS: I believe it has
19 been, Your Honor. This man went for medical
20 treatment. This should be litigated in the proper
21 forum.

22 THE COURT: That's what I'm saying.

1 ATTY. CONSOLDANE: I'm just saying
2 this happened, and I don't want it happening any
3 more.

4 THE COURT: It's on the record.

5 ATTY. WATKINS: It may happen
6 depending on the facts and circumstances.

7 THE COURT: I understand. We'll get
8 into that at the appropriate time. Anything
9 further?

10 ATTY. CONSOLDANE: No, Your Honor.

11 THE COURT: Mr. Ingram, do you want
12 to bring your client forward?

13 ATTY. INGRAM: Your Honor, this is
14 the Defendant, Donna Roberts. She will acknowledge
15 receipt of a copy of the Complaint filed herein.
16 This is an initial appearance and we will abide by
17 the Ohio Rules of Criminal Procedure, which
18 provides that you are not called upon to enter a
19 plea in a felony case at an initial appearance.
20 So, we will not do that. We will not request bail
21 at this time, but we reserve the right to raise
22 that issue at a later time.

1 THE COURT: It's always an issue to
2 be raised. Okay, you do acknowledge receipt of the
3 Complaint?

4 ATTY. INGRAM: Yes.

5 THE COURT: You've read it and
6 understand it?

7 ATTY. INGRAM: Yes. We do waive the
8 reading.

9 THE COURT: Do you have a date for
10 preliminary hearing you wish to set?

11 ATTY. WATKINS: Your Honor, we would
12 request considering the holiday, a preliminary
13 hearing on December 31st at 11:00 a.m.

14 THE COURT: Is that convenient to
15 both counsel?

16 ATTY. CONSOLDANE: Yes, Your Honor.

17 ATTY. INGRAM: I'll make it
18 convenient.

19 THE COURT: There will be no bond
20 set on this matter at the present and defense has
21 reserve the right to enter a plea at a later date.

22 (OFF THE RECORD)

1 ATTY. WATKINS: Your Honor, the
2 affidavits pursuant to the filing of our charges
3 yesterday were sealed and the order is until both
4 parties were arrested and therefore, I at this
5 point would request the Court to unseal the record
6 unless the Court --

7 THE COURT: I have already
8 instructed the reporter to file those.

9 ATTY. WATKINS: I wanted to make
10 sure we were conforming with the public records
11 law.

12 (OFF THE RECORD)

13 ATTY. INGRAM: On behalf of Donna
14 Roberts, I would request that the affidavit for
15 arrest warrant remain unsealed. It contains
16 references to evidentiary matters. Attached to it
17 are several letters, which I have not had an
18 opportunity to review, but I imagine that the State
19 will allege that these letters constitute
20 documentary evidence in this matter. Eventually,
21 we are going to have to pick a jury, our pool of
22 jurors is in Trumbull County. They will be exposed

1 to this pre-trial and I would respectfully submit
2 that the affidavits should remain sealed, at least
3 until we empanel a jury.

4 ATTY. CONSOLDANE: I would join in
5 that motion, on behalf of Mr. Jackson. The
6 Complaint should be enough to satisfy the needs of
7 the press at this time. I don't believe that there
8 is any reason to unseal the affidavit at this time.

9 ATTY. WATKINS: Your Honor, the
10 public records law on this issue, I believe is
11 clear. We have had cases before where affidavits
12 have been filed with this Court, and always they
13 have been released as a public record at the
14 appropriate time. I have joined in with defense
15 counsel on various times for example to eliminate
16 disclosure of video confessions prior to trial,
17 which are always litigated prior to trial, and in
18 fact, the State lost on that case and that is the
19 Danny Lee Hill case and another one was the case
20 against a man named Parks. Therefore, it is the
21 State's position from its knowledge of the law and
22 looking at the circumstances that it is a public

1 record, just like all filings and all hearings
2 before the trial and the State does not object to
3 its release.

4 ATTY. INGRAM: I think I would
5 request that you at least not unseal the affidavit
6 until Monday and that you give us an opportunity to
7 brief the public records.

8 THE COURT: Well, that is exactly
9 where I'm going. The Court -- I don't want to get
10 into a situation where we are going to have a
11 problem with empaneling a jury in this county
12 because of pre-trial publicity. I think the press
13 at some point has every right to review
14 particularly what has been filed. I think that the
15 Prosecutor is correct on that, but I'm going to
16 allow you, because of the nature of the contents,
17 until Monday to brief the thing, to find out why
18 Mr. Watkins is not correct. Part of that was the
19 material you are referring to was used as a basis
20 of the probable cause by way of affidavit, to have
21 the Complaint issued. That is a matter of public
22 record probably. Your task is to explain to the

1 Court, convince the Court that there is some
2 prejudice or bias that is going to be put upon your
3 Defendant, other than any other Defendant in the
4 similar circumstance. So, I'll allow you until
5 Monday. I'll order that that portion of the record
6 be sealed.

7 ATTY. WATKINS: I would suggest that
8 if the Court is going to do that, that under public
9 records law that the press be invited to
10 participate, because they have an interest in
11 litigating this and I think the law requires that
12 the press --

13 THE COURT: We have many spokesmen
14 here. Who wishes to address this?

15 ATTY. WATKINS: I think they would
16 have the opportunity.

17 THE COURT: For purposes of this
18 motion, do you have anything further than what you
19 have heard?

20 ATTY. WATKINS: I would suggest to
21 give them until Monday so their attorney can
22 respond.

1 ATTY. CONSOLDANE: The Court is
2 closed Monday and Tuesday.

3 ATTY. INGRAM: I'll do a memorandum.
4 I'll then send a copy of that memorandum to Mr.
5 Watkins, and I'll also send a copy of it to the
6 Warren Tribune and the Youngstown Vindicator and if
7 they then choose to move to intervene, that is
8 certainly something that they are entitled to do.

9 THE COURT: I am thinking of time
10 element here.

11 ATTY. WATKINS: It would have to be
12 early next week. I don't know how you could do it
13 otherwise.

14 THE COURT: I think the appropriate
15 thing here, we have this set for 11:00 on the 31st,
16 that gives everyone sufficient time to get your
17 briefs filed. I think that is appropriate.

18 ATTY. CONSOLDANE: Thank you.
19 (End of Hearing at 11:15 a.m.)
20
21
22

1 Monday, December 31, 2001:

2 (In-chambers at 11:00 a.m.)

3 THE COURT: At the request of the
4 Court, we are conducting some preliminary matters
5 in-chambers, prior to going into Court. The Court
6 has several motions before it this morning. The
7 first I would like to deal with is Motion to
8 Intervene, filed by Steve Bolton on behalf of WFMJ
9 Television, Inc. And there is a motion by the
10 Vindicator Printing Company in opposition, too.
11 Vindicator has filed a motion in opposition to
12 Defendant Roberts' motion to seal Court records. I
13 have also received Defendant's motion in memorandum
14 to hold affidavit and Exhibits under seal. Are
15 there any other motions that have been filed?

16 ATTY. CONSOLDANE: First of all, I'd
17 object to Mr. Bolton's motion being heard. I have
18 not been given a copy of that. I didn't know he
19 was going to intervene. I don't think he has any
20 business to intervene in this matter. He hasn't
21 served me with a copy and I represent one of the
22 Defendants in a capital murder case. I don't

1 believe he has any right to have this motion heard
2 today. The other motion as far as the Vindicator,
3 I was handed the motion just as we walked into
4 Court today and I would like to clarify one thing.
5 One thing on that motion, is that motion is
6 opposing the Defendant's request to seal the
7 record, and we did not request to seal the record.
8 The Prosecutor, on their own, sealed that affidavit
9 with the Court. We are only opposing them trying
10 to unseal at this time. They sealed it, we think
11 that it should remain sealed.

12 THE COURT: Steve, it is your
13 motion. You should address the thing.

14 ATTY. BOLTON: You are talking about
15 just the motion?

16 ATTY. WATKINS: This is the motion
17 to intervene. You are going to hear our responses
18 to that.

19 THE COURT: It is his motion.

20 ATTY. CONSOLDANE: Even though I
21 object.

22 ATTY. WATKINS: I'm going to object

1 to the intervening.

2 THE COURT: He has the right to
3 address the motion. You have the right to object
4 to it.

5 ATTY. CONSOLDANE: I can't object to
6 it, if I haven't seen it.

7 THE COURT: Mr. Bolton, what is the
8 reason that you can give why that motion should be
9 granted?

10 ATTY. BOLTON: Your Honor, this
11 obviously affects the First Amendment rights of the
12 news media, both the news media who are present
13 here by counsel as well as other news media who,
14 for reasons best known to them, decided not to
15 appear by counsel. I understand that perhaps one
16 segment of the news medium, a local newspaper here
17 appeared by letter or asked you by letter to
18 consider this matter.

19 THE COURT: Let me interrupt you.
20 For the record, besides the Vindicator and WFMJ, I
21 have also received correspondence from the Tribune,
22 from a Frank Robinson, Editor, whereby he calls

1 upon the freedom of information act, 5 U.S.(c) 552
2 for eliciting response from the Court as to justify
3 the actions that have been taken. Go ahead.

4 ATTY. BOLTON: After I filed this
5 motion, I did serve Mr. Juhasz and Mr. Ingram. I
6 was not aware of Mr. Consoldane's involvement, but
7 I served them with a copy of my motion. And I will
8 point out that my similar motion in a case some
9 years ago had been denied and that that denial had
10 been affirmed by the Court of Appeals or been
11 denied by the Court of Appeals, had actually been
12 filed in the Court of Appeals and the idea of
13 intervention in the Eleventh District, I can't
14 misrepresent the situation to the Court, in the
15 Eleventh District, the State, the case which Mr.
16 Juhasz cites is still good law. I would submit
17 that it is distinguishable because at the time, the
18 State, ex rel Vindicator Printing Company vs.
19 Watkins was tried. The issue in that case was
20 whether the paper could have access to the
21 Prosecutor file, to portions of the Prosecutor
22 file, as opposed to a document which was filed in

1 the Court. We simply seek a way in which we can be
2 heard, which we come before the Court and make some
3 effort to protect our client's rights, our First
4 Amendment rights to examine matters which are
5 concedingly public records. An affidavit filed
6 with the Court is by definition, any definition, a
7 public record, but certainly statutorily a public
8 record. We simply seek a vehicle by which we can
9 be heard and protect our rights. Short of mandamus
10 at this point, we feel there is no reason to file a
11 mandamus action. The Court has not taken any
12 action which would warrant a mandamus action at
13 this point. We simply seek a vehicle to be heard,
14 and to express to the Court such law as we believe
15 might be appropriate in guiding the Court, which
16 might be of assistance in guiding the Court towards
17 a decision in this matter. We have no wish to
18 effect the outcome of the criminal case or
19 interfere or intervene in it for the purpose of
20 affecting any substantive result in the criminal
21 case.

22 THE COURT: Fair enough. Dennis?

1 ATTY. WATKINS: I would indicate in
2 prefacing the record that this began as a result of
3 the State requesting the Court to seal the record
4 when we received warrants for the arrest of the
5 Defendants in this case, pursuant to an affidavit
6 filed by Detectives from the Howland Police
7 Department and that has been done in this county
8 for years and counties throughout Ohio for years
9 and the reason that we do that is that an officer,
10 and officers that go out with arrest warrants,
11 there could be danger, if this were to be released
12 at the point in time before a person is
13 apprehended, that it is necessary to have a period
14 of time, the affidavit be secret until the person
15 is arrested and charged. This is commonly done
16 with secret indictments, however, Grand Jury
17 transcript is not made public record pursuant to
18 criminal rules. Once the person has been or
19 persons have been arrested, the purpose of the
20 dealing is finished, is completed, and becomes
21 public record, and that has been the policy of the
22 Trumbull County Common Pleas Courts, since I can

1 remember in the early 80's, and that is why at that
2 point, that I indicated in as far as I was
3 concerned, my motion was limited for the purpose of
4 having these Defendants arrested. They were
5 arrested and there is now a public case number, a
6 public complaint and a public affidavit. And my
7 view is that that would be a public record.

8 However, there are Exhibits that are attached to
9 the affidavit, that are pieces of evidence, such as
10 a confession, heretofore the Supreme Court of Ohio
11 and I believe still the law has maintained that and
12 a change of venue is a remedy, if there is pretrial
13 publicity and I have for a long period of time been
14 dealing with cases where the press has access to
15 affidavits and information and we still are able to
16 obtain trials locally for example in the Stanley
17 Adams case, even though this Honorable Court had a
18 trial the year before, we tried Adams, and even
19 though the media endlessly printed in the paper
20 stories about his being, about him being a serial
21 killer and going through his record, to the
22 astonishment of many, there are people in this

1 county who do not read the newspapers and who do
2 not watch local T.V. and we were able to obtain a
3 jury. I believe that I would go personally to the
4 English system where we have very little
5 information when the case is tried. However, that
6 is not the law and that is why I express my opinion
7 to the Court at the time that these Defendants were
8 arraigned on affidavit of complaints. I believe
9 further, however, that at this point in time, and
10 Attorney Bolton has mentioned, that I don't believe
11 the newspaper or the media can intervene in a
12 criminal case, and their remedy would be mandamus,
13 so I'll object as a matter of principle that they
14 can not intervene in this case.

15 THE COURT: You have already stated
16 your objection?

17 ATTY. CONSOLDANE: I'll go last.

18 ATTY. MILLETTE: We base our motion
19 on our First Amendment right to public access
20 documents and this is particularly important in the
21 context of these documents, these are police
22 affidavits supports the arrest warrant, and the

1 First Amendment is in public records to access, is
2 most important in that context and the Government's
3 exercise of that kind of power. There are many
4 other ways in which the Defendants' rights can be
5 protected, other than keeping these documents
6 sealed. There is a change of venue. There is Voir
7 Dire, as Attorney Watkins said, there are many
8 people who aren't going to read the papers, don't
9 even get the papers, won't see this news and I
10 think the case law strongly supports that position.

11 THE COURT: John?

12 ATTY. JUHASZ: Judge, one of the
13 first things I want to say is I understand what Mr.
14 Watkins has said about the Supreme Court's decision
15 about change of venue. Two things strike me as
16 curious about that. The first is that seldom do
17 they cite or go into any analysis of what I think
18 is still the seminal case, which is the Sheppard
19 case. And that is the case that makes it very
20 clear that it is the obligation of the trial judge
21 to do what is necessary, before a trial starts,
22 before it becomes a media circus to make certain

1 that the Defendant's rights to a fair trial are
2 protected. Secondly, it is easy and with all due
3 respect, I would have to say a bit cavalier for
4 representatives of the media to say, "Well, don't
5 worry, you can have a change of venue or all sorts
6 of other things that can be done." That is easy to
7 say, but there are to my recollection about two
8 hundred people on death row, and I believe only
9 eight cases where venue has been changed and some
10 of those had to do with the Lucasville riots and
11 the reason I bring that up is because as a
12 practical matter, while everybody stands here in a
13 hearing like this and says, "Don't worry, don't
14 worry, there is a change of venue." The fact of
15 the matter is this doesn't happen very often. I
16 know you and I were involved in a case where it did
17 happen. I have submitted there were other issues
18 besides pre-trial publicity that warranted that
19 particular change of venue. With regard to the
20 media, I would have to mirror what Mr. Watkins and
21 Mr. Consoldane have said and even what Mr. Bolton
22 has agreed to and that is that the Watkins case

1 outside of the Eleventh District, which was tacitly
2 affirmed by that point by the Supreme Court of Ohio
3 is good law in this district.

4 THE COURT: Do you agree John or
5 Steve that it is somewhat distinguishable from the
6 fact situation here?

7 ATTY. JUHASZ: I don't and I'll tell
8 you why. If you look through the Supreme Court
9 opinion, when the case got to the Supreme Court,
10 one of the things they talk about and one of the
11 things we quoted in our memo was the concern that
12 trial judges also should have, to insure that a
13 Defendant has his right to a fair trial. There are
14 as we set forth, at least two reasons these are not
15 public records in our estimation. Without
16 question, I think that is clear and I, and Mr.
17 Watkins have conceded as much, that is clear about
18 the items which are potentially evidentiary
19 materials. Setting the affidavit to one side. But
20 as we also tried to make clear in our memorandum,
21 the Watkins case and I don't see that Steckman,
22 which was the later Supreme Court case and I guess

1 the seminal public records case, from the Supreme
2 Court, I don't see anything in Steckman that has
3 changed what happened in the Watkins case, and in
4 those cases, they make it clear that when the
5 disclosure of those items is prohibited by State or
6 Federal law, then they are not public records.
7 That goes to the Constitutional fair trial stuff.

8 THE COURT: Did not the previous
9 Vindicator, Watkins case go on (a)(2) of that
10 section of confidential enforcement?

11 ATTY. WATKINS: Dealt with work
12 product and investigatory.

13 ATTY. CONSOLDANE: I think that
14 neither the T.V. or the newspaper, or the newspaper
15 can intervene in a criminal case. I think they
16 have a proper remedy, and it is not a motion to
17 intervene. They can certainly file for writ of
18 mandamus to enforce that. I don't think it is
19 proper for them to intervene in a criminal case.
20 Then, secondly, is that at this point in time, both
21 Defendants have been indicted by the Grand Jury.
22 The minutes in the Grand Jury are secret and they

1 are not going to be released. If they would have
2 directly presented this to the Grand Jury, there
3 would be no need for this affidavit to have been
4 filed. This affidavit also contained a lot more in
5 that, than what was necessary to go out and arrest
6 these two individuals. There is a lot of things
7 that were put in there, just to appeal to people's
8 pure interest and I think that is wrong upon the
9 State to do something of that nature and also is
10 that of all of these cases that we have, in these
11 death penalty cases that do get press, it is
12 amazing that everybody comes in here and says that
13 they don't remember reading anything about it, or
14 formed any opinion, but that gets stuck in the back
15 of their minds and as soon as it is brought up in
16 Court, it triggers something and they remember, and
17 it is too late at that time for them to raise their
18 hand. Nobody wants to admit that they read the
19 newspaper and have already formed an opinion, when
20 they come in here to sit in a trial, and it is
21 unfair to the Defendant to have to phrase it. It
22 is the whole procedure of a death penalty case is

1 unfair, because you have to get jurors that wanted
2 to say, "Yes, I can invoke the death penalty." And
3 they are already slanted towards law and order. To
4 get this type of pre-trial publicity on things that
5 we can't comment about, and actually the Prosecutor
6 can't comment about, is a lot of that stuff is
7 evidence and a lot of stuff in that affidavit are
8 purely conjecture of what the police officer thinks
9 might have happened, because of a couple other
10 things that he has picked up as evidence.

11 THE COURT: That is what an
12 affidavit is. Many times it contains some
13 assumptions and conjecture based on facts that are
14 presented and then the probable cause, of course,
15 is a different standard from beyond a reasonable
16 doubt.

17 ATTY. CONSOLDANE: One last thing, I
18 think that the newspaper and the press should be
19 able to look at that, but not until it is presented
20 in Court. What is the difference? They are going
21 to get it. They are going to get to see this
22 information eventually, after it's presented in

1 Court. Why is it so necessary that they have it
2 now before the Defendants go to trial? They are
3 going to get the information. Everything that is
4 contained in the affidavits will probably be
5 presented at trial, after a jury has been picked
6 and they have been admonished. To keep that sealed
7 until we pick a jury, what is the different? They
8 are going to get the information anyhow. What is
9 the difference in the time?

10 ATTY. BOLTON: The holding or the
11 language in State, ex rel Vindicator vs. Watkins,
12 that newspapers or media couldn't intervene in a
13 criminal case was essentially in that case dicta.
14 It was simply supporting the holding. The Supreme
15 Court has made in that case and elsewhere that the
16 proper remedy after a Court has acted is mandamus,
17 which is, that is in the statute. But as the Court
18 knows, there is a long history in Ohio of media
19 intervening in criminal cases. For example, before
20 it was established that the media had a right to be
21 present at certain parts of the criminal case, the
22 media regularly intervened in criminal cases to

1 gain access to suppression hearings and matters of
2 that kind.

3 THE COURT: That is on a different
4 issue.

5 ATTY. BOLTON: I understand, but the
6 principle is the same. We are not intervening in
7 any substantive way, we are simply speaking in a
8 forum to be heard before the possibility of our
9 rights being foreclosed comes up, and trying to
10 foreclose other lengthy litigation, which may well
11 have the effect of prejudicing the Defendant, far
12 more than anything that might be done here today.
13 The second point here is that both the statute and
14 all of the case law which bears on this issue,
15 clearly indicate that an affidavit filed with the
16 Court, filed with the Clerk of Courts here in the
17 Courthouse is a public record, and the Defendant,
18 the Defendants have the duty to show why it should
19 not be disclosed. What they are arguing is, they
20 are arguing, "Well, this might prejudice a
21 Defendant, somehow this information might be
22 difficult for the Defendant to overcome in Voir

1 Dire. Somehow this information might be
2 prejudicial if let out in the community." But what
3 they are not able to show is why it is not a public
4 record, and why it should not be disclosed under
5 149.143 and there is a good reason for that. There
6 is no reason why it should not be disclosed under
7 149.143 and the statute and case law is quite
8 explicit that cases, all of the cases decided under
9 149.143 says if it is filed with the Court, it is a
10 public record and even counsel for the Defendants
11 have agreed. If an Exhibit is filed with the
12 Court, it is a public record. Nobody even
13 questions that, well an affidavit is filed with the
14 Court, public record. That is the end of the story
15 and whether we are simply heard on the issue, or
16 whether we are allowed to intervene on the issue,
17 that doesn't, substantially that does not matter at
18 all, what does matter is that the Court in looking
19 at the statute, hold the Defendant to their burden
20 of proof in this matter, and if they are hold to
21 their burden of proof, they can't meet it.

22

1 ATTY. CONSOLDANE: He's right that
2 it is a public record, but this Court sealed that
3 public record, and we are not saying that he
4 shouldn't be entitled to it some day, I'm saying to
5 protect the Defendants' interest, leave it sealed
6 for a while longer. And then allow it to be
7 reviewed by the press. What harm is that going to
8 cause to the First Amendment? It is already
9 sealed. Give our clients a fair trial and then
10 release all of the information to the press.

11 ATTY. WATKINS: Just to make the
12 record, the record was, we made a motion in-camera
13 pursuant to the affidavits and the warrants, for a
14 sealment for a finite period of time. And they
15 made a motion, and I think it was Jerry, you wanted
16 to object to that, and they made a motion.

17 THE COURT: I never granted their
18 motion, what I did was fail to act on their motion.
19 The seal was maintained.

20 ATTY. INGRAM: The Prosecution moved
21 to seal, the Prosecution then moved to unseal. I
22 objected.

1 ATTY. WATKINS: No. The original
2 motion ex-parte was, we made a motion, when we got
3 together and Paul Monroe came in, we made a motion
4 to seal until the Defendants were arrested. That
5 was the motion.

6 ATTY. CONSOLDANE: We don't know
7 that.

8 ATTY. WATKINS: I mentioned to the
9 Court under the motion granted, that it should be
10 unsealed. That is the standard motion that I make
11 in all of these for the last 20 some years.

12 THE COURT: Let the Court of Appeals
13 deal with that. Criminal case is a case between
14 the State and an individual or individuals. They
15 are the only parties to the action. The news media
16 have no right to intervene in this action. They do
17 have a right to mandamus under the information act
18 for public records. There is no question the
19 affidavit, upon which the warrants were issued has
20 been filed. I think anybody other than somebody
21 representing a news organization would have to
22 agree that the English have a better system to see

1 that this abstract thing of justice is probably
2 done, because inevitably, it divulges upon so many
3 people to sit and listen to the facts. We can
4 argue both sides all day and never come to any
5 reasonable conclusion as to what effect it has on a
6 trial. Any sane person has to acknowledge that
7 pre-trial publicity has at times a monumental
8 affect upon a fair trial. But we happen to live in
9 a country, which has, thank God, the bill of rights
10 and one of those is the First Amendment right.
11 Although the newspapers seem to think that is
12 exclusively their right. It is a right that
13 belongs to everyone. The newspapers have no
14 greater right than any other individual to the
15 rights contained in the First Amendment. You
16 wouldn't believe that by reading some of the cases.
17 In any event, the public record law has exemptions.
18 The case alluded to before against Mr. Watkins from
19 the Vindicator dealt with this (a)(2) which was
20 confidential law even for the investigator, and the
21 case went through great length through the history
22 of what happened and how they were called in. The

1 newspaper was trying to get the material found by
2 that investigation. There is another essential,
3 (a)(4) that says trial preparation record means any
4 record that contains information that is
5 specifically compiled in reasonable anticipation of
6 in defense of, a civil or criminal action. I don't
7 know that that directly applies here. It goes on
8 to say including the independent thought process
9 and personal trial preparation but that says,
10 specifically compiled in reasonable anticipation
11 of. I would think that this affidavit is
12 specifically compiled in anticipation of, but it is
13 filed as a public record, and here's the rub on
14 this whole thing, which the upper Courts are going
15 to have to deal with. We all start out and say, we
16 got to balance the First and Sixth Amendment right
17 of Defendant to have a fair trial. If you accept
18 the undebatable fact that pre-trial publicity
19 contained at trial, the Courts have held, well, you
20 have right to Voir Dire, and then you end up with
21 what the Defense is afraid of here, people get up
22 and say, "No, I don't remember anything about it.

1 I read something about it, and I don't recall the
2 details." That is for anybody who reads the
3 newspapers, a person who takes the time of reading
4 a newspaper is usually of the level of intelligence
5 that they aren't going to be so cavalier as I would
6 get, but that is part of the system. The Courts
7 say, Voir Dire can cure that. And they say that if
8 you can't, then you have the change of venue to
9 cure it. And then it is transferred to another
10 jurisdiction, where it is put in the news media
11 again. I would note, for the Appeals Court that
12 the affidavit contains facts, some conclusions,
13 which are absolutely necessary in order to get a
14 probable cause finding. The thing that does
15 concern me is so many quotes contained in here,
16 that I think should be evidentiary material. I
17 think it is possible to go through this affidavit,
18 to give to the media all of the necessary details.
19 I don't really agree, although I have ruled, you
20 are not a part of it, you will be granted an
21 opportunity to express your opinion. The whole
22 purpose for the First Amendment is to keep

1 Government honest. Things don't happen in secret,
2 what have you. You have perhaps the duty, by way
3 of the media to make sure that when the Government
4 is prosecuting, that the public is informed as to
5 the basis of it, otherwise you could hold people
6 for long periods of time and nobody would know
7 whether or not the Government is acting on good
8 grounds or not, so that is the right we don't want
9 to give up. But the other aspect and I think it is
10 very present in this case is there is a salacious
11 part of this that everyone just kind of has picked
12 up, must be present. That is the part that
13 concerns me, because that doesn't add anything to
14 the First Amendment, it might be good for selling
15 newspapers or T.V. programs, but that is the part
16 that concerns me where we start getting into the
17 balancing act with the Sixth Amendment right being
18 affected. Mr. Juhasz has mentioned that the Court
19 has to do a balancing act at some point. I think
20 that this public records act is short sides in some
21 way, but it is the law we must follow. I think
22 what I'm going to do here is to order that the

1 Prosecution turn over most of this affidavit, with
2 certain parts redacted and I am doing that, by
3 saying that those portions may be very essential to
4 the Defense, does not hinder the Prosecution in any
5 way, except that it keeps out some of these matters
6 that have no justifiable use at this point, other
7 than to possibly taint a future jury pool.

8 ATTY. BOLTON: Speaking perhaps as
9 an officer of the Court and not as an intervenor,
10 if I may, I had heard, I don't know what is in this
11 affidavit, but I have heard perhaps rumors that
12 there was some material in it that might be
13 interesting, but not particularly publishable.

14 THE COURT: That is true. I think
15 some of this you would not publish because of its
16 very nature. It would not be in good taste.

17 ATTY. INGRAM: You can't speak for
18 the Tribune.

19 ATTY. BOLTON: Anticipating that
20 such an issue might come up, I believe that the
21 Supreme Court has spoken to this issue, and I refer
22 to State ex rel Beacon Journal Publishing Company

1 vs. Maurer, 91 Ohio St. 3rd, 74. It was decided on
2 February 14th of this year and if I might read a
3 little portion of this. This was about incident
4 reports, which everybody considers to be public
5 records, and incident reports don't even rise to
6 the level of filing like an affidavit, which is far
7 more clear. The Court ruled that incident reports
8 which contain material from 911 tapes were public
9 records, even though the stuff from the 911 tapes
10 might not be otherwise public records and it said,
11 "We rule this way despite the risk that the report
12 may disclose the identity of an uncharged suspect.
13 A deputy incorporated the typed narrative
14 statements by reference in the incident report.
15 He consequently incorporated them in a public
16 record. He can not now remove the public records
17 cloak." "It does not matter that release of the
18 tapes might reveal the identity of an uncharged
19 suspect or contain information, which if disclosed,
20 would endanger the life of physical safety of a
21 witness." "Once clothed with the public records
22 cloak, the records can not be defrocked of their

1 status." Now, what this case says and what the
2 Supreme Court has said, is that once material that
3 would otherwise be prohibited from disclosure under
4 the public records act is placed in a public record
5 act, in a --

6 THE COURT: You are saying once it
7 is turned over you can't ever get it back?

8 ATTY. BOLTON: In this cae, it was
9 an incident report, what the Court has before it is
10 an affidavit. Everybody concedes an affidavit is a
11 public record. This affidavit may contain
12 material, which the Court believes in good
13 conscience ought not to see the light of day, for
14 reasons of either good taste or for reasons that it
15 might make it more difficult to pick a jury, but it
16 is an obtained public record status by reason of
17 the fact that it is included in the body or
18 attached to an affidavit and therefore, I believe
19 the Supreme Court has ruled that it must be
20 disclosed.

21 THE COURT: You are saying that the
22 Supreme Court by virtue of that case, just gives

1 the total power to the Prosecution, the State, to
2 put it all out there, and let the newspaper grind
3 it up.

4 ATTY. BOLTON: Having defended, I
5 have never been a Prosecutor, but I have defended a
6 few people here and there, and as we all know,
7 there is more than one type of affidavit. There is
8 a notice affidavit, which basically sets out the
9 basic elements of the crime and little else, and
10 then there are affidavits such as we have seen come
11 through in the course of all of the prosecutions
12 from Mahoning County, against the judges and
13 lawyers, which are extra ordinarily detailed.
14 Extra ordinarily detailed and contain virtually the
15 Government's entire case. And the Government has a
16 right to do that. They have the right to, they
17 have the right to file an affidavit which contains
18 their whole case, and risk the possibility that it
19 may, that the defense may come back and say, you
20 prejudiced our client, we have to have a change of
21 venue, and force the Prosecution to go out of the
22 county. Now the Prosecution knows that when it

1 files the affidavit and knows that it is giving the
2 Defendant's remedies, both at the trial level and
3 subsequent, down the years on appeal on a capital
4 case. Now, the Prosecutor in this county is
5 unusually experienced in capital cases. He's had
6 quite a number of them, which he's tried himself,
7 so the Prosecutor in this case knows what he's
8 doing in capital cases. Whatever other
9 disagreements I have had with Mr. Watkins over the
10 years, he does know what he's doing in capital
11 cases and if he chooses to say put the matter in an
12 affidavit, it is because he thinks the public ought
13 to know about it and Court ought to know about it.

14 ATTY. CONSOLDANE: Let me say one
15 thing, is that Mr. Watkins would not go and say any
16 of these things in the newspaper. He'd be barred
17 under the code of ethics, you can't talk about the
18 case. This is a way around him being able to
19 discuss his case, to the public, by putting it in
20 an affidavit. It is an affidavit, I have to agree,
21 it is filed there, and it is subject to being
22 public information, but there is nobody that said

1 when it has to be released. It doesn't have to be
2 released today, tomorrow or next week.

3 THE COURT: If it is a public
4 record, it's a public record.

5 ATTY. CONSOLDANE: If it was just a
6 public record if it was just filed, that is correct
7 but it was under seal, there is not one case that
8 says when it has to be unsealed.

9 ATTY. WATKINS: May I respond?
10 John, do you want to go first?

11
12 ATTY. JUHASZ: I wanted to clear up
13 a couple of things, one if it is not clear, our
14 motion is that we don't agree with Mr. Bolton that
15 it is a public record. I understand what the Court
16 is saying, and the authority for that is not only
17 in the Statutes, but in the Watkins case.

18 THE COURT: Where do you get the
19 authority under the statute?

20 ATTY. JUHASZ: Under statute and I
21 am talking about the statute as it is presently
22 numbered. It is (a)(1)(q) and basically if you

1 will permit me to paraphrase it, it defines public
2 record as being records kept by public office
3 except that public record does not mean any of the
4 following, and when you drop down to (q), it says
5 records the release which is prohibited by State or
6 federal law. Now, while that might sound
7 unnecessarily broad, that doesn't give us a whole
8 lot of guidance. Let me direct the Court to the
9 quote we have on page 3 of our memo which is from
10 the Ohio Supreme Court in again, Vindicator
11 Printing vs. Watkins, and the first thing to do of
12 course is talk about the concerns the United States
13 Supreme Court had in Sheppard vs. Maxwell. "Many
14 devices are available to a trial court to prevent
15 the prejudicial effect of such pretrial publicity,
16 including a change of venue and sequestration of a
17 jury. However, if during the pendency of the
18 criminal proceeding, such measures have not been
19 undertaken or are ineffective in assuring an
20 impartial determination of the issues and a danger
21 of material prejudice to a criminal defendant is
22 posed thereby, the criminal defendant clearly

1 possesses standing to challenge the release of such
2 information in an action brought pursuant to R.C.
3 149.43. Inasmuch as such disclosure would
4 prejudice the Defendant's rights under the State
5 and Federal Constitutions, the information at issue
6 would constitute records the release of which is
7 prohibited by State or Federal law." The Ohio
8 Supreme Court has said that if these are records,
9 the disclosure of which would prejudice the
10 Defendant's rights under the State and Federal
11 Constitutions, and again by implication, state
12 Constitutional rights, then under (q), they are not
13 in fact public records.

14 ATTY. BOLTON: Assuming you're
15 right, where's the beef? Where's your showing of
16 prejudice?

17 THE COURT: That gets to the very
18 heart of this argument here.

19 ATTY. WATKINS: I need to respond.
20 I would like to indicate that the affidavit that
21 was filed, I think it is clear that in our opinion
22 that there is some discretion with the Court and I

1 have already reiterated it twice, once the reason
2 for the sealment is completed, per the original
3 motion, then it becomes a public record. I want to
4 go back to a case with Dave McLain, with the Danny
5 Lee Hill case where Jim Lewis made a motion to
6 close the Courtroom for the suppression hearing
7 confession, video confession, which is as awful and
8 salacious as any confession anyone would hear, and
9 I agreed with Defense counsel to close the
10 Courtroom.

11 THE COURT: And that, of course, is
12 improper.

13 ATTY. WATKINS: And participation,
14 but the bottom line is that Ohio law, well, you can
15 close the Courtroom, but you have to have a hearing
16 to show that there is this prejudice which John
17 alluded to, and at that point in time, Judge McLain
18 overruled both motions, where I joined in, and it
19 was made public, and there are a lot of confessions
20 that right before trial, that we are going to play
21 in Court that are very salacious and these other
22 evidence and letters are going to be public. This

1 is prejudicial. Timing may be of importance as to
2 when something is released at suppression right
3 before trial or at the initial appearance. If I
4 had my way, I would have the -- I think the other
5 problem here is that you have a number of cases,
6 since Sheppard that modify and we are dealing with
7 McVeigh, just looking at the publicity of the
8 McVeigh case, Murphy vs. Florida which discusses
9 pre-trial publication where we deal with the media
10 presence in the Courtroom, right to T.V. cameras,
11 we have historically taken the First Amendment and
12 given the information to the press, and we have
13 been able to go through the process. I objected
14 when Robert Parks, when the T.V. cameras wanted to
15 go into the Courtroom, because I have felt this
16 kind of publicity is negative. I still have great
17 concern for it, but in my opinion, the Court has
18 here, a public document, that contains in my
19 opinion, evidence that goes to circumstantial
20 evidence dealing with motivation, which proves
21 probably cause in this case. And so it is subject
22 to some control and should be subject to more

1 control by the Court, but the problem I see is the
2 historical development in the past 20 or so years
3 against the Sheppard case, especially with the
4 public records law. I have no problem with the
5 Court ruling in the sense that I agree with the
6 fact that there should be some control dealing with
7 for example letters or maybe parts of the
8 affidavit, but I'm not too much in favor of the
9 climate here is not as good as it should be and I
10 think the law dealing with, that dealing with the
11 911 tape, where it is an incident report, it is a
12 public record, is different from when we are
13 dealing with filing an affidavit and the control of
14 the proceedings and the Court record, so I think it
15 is a gray area here and I guess that is where I am
16 ending.

17 THE COURT: I think we have a public
18 record that's been filed. The Court has listened
19 to arguments from all sides. I agree with the case
20 cited by Mr. Bolton that once you have a cocoon
21 that goes into a butterfly, you can't put it back
22 into the cocoon. So it is a public record. But I

1 think that the Court still has a duty to see that
2 the First Amendment is complied with and that is to
3 give the media the basic information as to why this
4 charge is pending. I think there are portions of
5 this affidavit, that there is no legitimate use for
6 the newspaper to have when balancing against the
7 right of the Defendants. This information will
8 come out during trial. There is no harm done to
9 the public in the meantime, and I'm going to order
10 that portions of it be redacted. I would suggest
11 that that be done with both input from the State
12 and the Defense and the balance of that will be
13 turned over to the news media as soon as possible.
14 That is the only thing I can see here. If I had my
15 druthers, I would give the press none of this,
16 because it does nothing except cause possible
17 prejudice in picking a Jury. They will find out
18 about it in due course, but I don't think that the
19 law permits me to take that position. I think that
20 the public records law quite clearly explains this
21 or shows this to be a public record and I don't
22 think the exceptions apply, with all due respect,

1 Mr. Juhasz, I see a difference between this and the
2 argument made in the previous Watkins case. Jerry,
3 you have been awful quiet. That bothers me, but
4 that will be my ruling. I would ask someone from
5 both sides here to get together with this affidavit
6 and go through that and give them that as soon as
7 possible.

8 ATTY. WATKINS: Then the Court will
9 decide if we can't agree.

10 ATTY. BOLTON: Your Honor, may it
11 please the Court, having heard the Court's ruling,
12 it is my understanding that the Court intends that
13 the parties review this affidavit, then submit and
14 then say, "All right, these are the parts that we
15 would jointly like to be redacted." I would
16 request that the Court, nevertheless exercise its
17 independent judgment.

18 THE COURT: I'm asking them to get a
19 proposal. It will be my call on it, and I'm sure
20 they are not going to agree on all parts. Of
21 course, the original affidavits are a part of the
22 record that will be available for review by the

1 Court of Appeals.

2 ATTY. BOLTON: And the second
3 request I have is that the Court place a deadline,
4 so that the news media, this is a --

5 THE COURT: I would hope by tomorrow
6 morning this could be done, if not today.
7 Wednesday morning. Tell them by mid-morning, if
8 somebody wants to stop here and pick it up.

9 ATTY. WATKINS: I'd like to go on
10 record, once the press leaves.

11 THE COURT: Do you waive the
12 presence of your client?

13 ATTY. CONSOLDANE: Depends on what
14 he's going to say.

15 THE COURT: Waive his presence until
16 we find out?

17 ATTY. CONSOLDANE: Until we find
18 out.

19 ATTY. WATKINS: I will say this that
20 the State is taking the position --

21 ATTY. JUHASZ: We also waive the
22 presence of the Defendant.

1 ATTY. WATKINS: We take the
2 position, looking at the history of affidavits and
3 referring to confessions and to different things
4 that to be consistent, it is our position that the
5 affidavit, as it stands is public record, and we'll
6 participate, but that is our position that the
7 affidavit -- however, I believe that the Exhibits
8 are excludable because that is in my mind evidence.

9 ATTY. CONSOLDANE: How about the
10 drawings?

11 ATTY. WATKINS: I think that the
12 Exhibits themselves, the letters themselves are
13 going to be introduced, however, to go through a
14 journey of picking out what is good and bad in the
15 affidavit for release, which we'll do pursuant to
16 Court order, we would note we would object as a
17 matter of policy.

18 THE COURT: They are not part of the
19 thing. I'm going to order that the Exhibits are
20 not included. That is not to be given to the
21 media. That is evidence.

22 ATTY. WATKINS: I can defend the

1 Exhibits, but I cannot defend the redacting of an
2 affidavit, because there are many in the past and
3 in the future, where we'll be doing this quite a
4 bit.

5 THE COURT: I am looking here this
6 morning and I couldn't see -- there's a whole bunch
7 of evidence that is -- what I was thinking to begin
8 with that should not be in here. I'll make this
9 very simple.

10 ATTY. WATKINS: We have quotes from
11 evidence and there are going to be confessions and
12 motivation, we can't create the scenario here.

13 THE COURT: The affidavit will be
14 given, no attachment. You don't have to redact.
15 (End of in-chamber discussion.)

16

17 IN OPEN COURT AT 12:05 P.M.:

18 Arraignments before Judge Stuard

19 THE COURT: Case number 01-CR-793,
20 State of Ohio versus Donna Roberts.

21 ATTY. INGRAM: This is the
22 Defendant, Donna Roberts. She will acknowledge

1 receipt of the copy of the indictment, she has read
2 the indictment, she's discussed it with counsel.
3 She understands the allegations contained therein,
4 and at this time, she would waive the reading and
5 she would enter a plea of not guilty to each count,
6 and each specification attached to each count.

7 THE COURT: That plea of not guilty
8 is entered for the record. Concerning bond, Mr.
9 Watkins?

10 ATTY. WATKINS: This is a capital
11 offense, where the presumption is great from the
12 evidence contained in the affidavit, no bond should
13 be given. It is the State's position, there should
14 be no bail in this case, and for both cases.

15 ATTY. INGRAM: Donna is 57 years of
16 age. She has no prior criminal record. She has
17 been a resident of Trumbull County for a prolonged
18 period of time. She owns real estate here. Her
19 family resides in this area. And we would
20 accordingly request that the Court set a reasonable
21 bail.

22 THE COURT: I'm not going to set any

1 bail at the present time. I'm going to ask, if you
2 wish to have a pre-trial set now, or if you wish to
3 take care of that. We should have a definite date
4 as to the next step on this. Do you have a date in
5 mind?

6 ATTY. INGRAM: I would suggest 30
7 days. It would be incumbent upon the Defense to
8 request discovery and in order for a pre-trial to
9 be meaningful, we should have some discovery in our
10 possession by the date of pre-trial. 30 days would
11 seem reasonable to me.

12 ATTY. WATKINS: That is fine.

13 THE COURT: I'm going to set this
14 for the afternoon of January 30, which is a
15 Wednesday, and at that time, if need be, we'll
16 revisit the question of bail, but for the time
17 being, there is no bail set.

18 ATTY. INGRAM: Thank you, Your
19 Honor.

20 THE COURT: State of Ohio versus
21 Nathaniel Jackson. Case number 01-CR-794.

22 ATTY. CONSOLDANE: This is Nathaniel

1 Jackson and he's received a copy of his indictment,
2 has read it, and understands the same, including
3 the possible penalties. Waives any further reading
4 in open Court, and would like to enter a plea of
5 not guilty and request that a reasonable bond be
6 set.

7 THE COURT: Pleas of not guilty are
8 entered. Mr. Watkins?

9 ATTY. WATKINS: We make the same
10 recommendation, no bail.

11 THE COURT: There will be no bail
12 set. Pre-trial will be the same date, January 30,
13 2002. There is another matter before the Court,
14 which we have had extensive discussion with all
15 parties, including representatives of the press,
16 and although the Court has ruled that the press
17 cannot intervene in this matter, I did extend the
18 courtesy of allowing their counsel to participate
19 by way of assisting the Court in resolving the
20 matter. The Court sealed the affidavits in this
21 matter, prior to the warrants being issued. That
22 is commonly done. There was a motion by both

1 Defendants at the initial hearing, wherein it was
2 requested the Court not break that seal until
3 further argument had occurred. We had extensive
4 argument from all interested parties this morning,
5 and the Court's resolution is that once the
6 affidavit was filed, it is a public record. There
7 was also, there were also attachments to that
8 affidavit, which the Court has ruled, based on the
9 Sixth Amendment rights of the Defendants, that
10 those will not be unsealed, until they are
11 introduced at trial, and at that time, they will be
12 within the public record domain. The Court is
13 called upon to, at times, balance the Sixth
14 Amendment rights of any particular Defendant
15 against the right of the public to know under the
16 First Amendment. The public will have access by
17 way of the affidavit to all factual matters and
18 content upon which the affidavit was originally
19 filed to get the arrest warrant, and that is my
20 humble attempt to try to rationalize the situation
21 that we are at presently. The media will have an
22 opportunity to pick up a copy of the affidavit this

1 morning, if they wish to wait around, and the Court
2 will have the matter, has the matter set for
3 hearing on January 30, 2002. Everyone have a nice
4 New Year.

5 ATTY. CONSOLDANE: Do you want to
6 pick a date for motions, we are going to need a
7 date for that.

8 THE COURT: I anticipate that
9 discovery will be given. You will get your motions
10 filed within the next two months.

11 ATTY. WATKINS: We'll have to
12 consider speedy trial and evidentiary problems,
13 with a number of witnesses from all over.

14 THE COURT: Let me ask that the
15 parties involved here, get a schedule and submit it
16 to me for approval. We have the overriding problem
17 here.

18 ATTY. WATKINS: I'll talk to both
19 sides. We'll talk to both sides and try to work
20 out a schedule and get back to the Court within a
21 week or so.

22 THE COURT: That is fine.

1 ATTY. CONSOLDANE: Even though I
2 made a lot of my reasons on the record in there, I
3 wanted to make it clear that I am still objecting
4 to the release.

5 THE COURT: All objections are
6 noted.

7 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
8 HEARING)

9 ATTY. WATKINS: The Court at side
10 bar, the Court also included a two page affidavit
11 for a search warrant as being the public record,
12 with the same caveat that none of the letters or
13 Exhibits are to be given for that second affidavit.
14 I am simply clarifying what was discussed at side
15 bar.

16 (COURT IN RECESS)

17

18

19 Wednesday, January 30, 2002; Waiver of Speedy Trial:

20 THE COURT: Mr. Juhasz, would you
21 come forward with your client? After talking in
22 chambers with representatives on both sides, it is

1 my understanding that you gentlemen have agreed
2 upon a trial date as well as all necessary motions
3 that are going to be heard prior to that time; is
4 that correct?

5 MR. JUHASZ: That is correct, Your
6 Honor.

7 MR. WATKINS: That is correct, Your
8 Honor.

9 THE COURT: We will journalize those
10 dates. I further understand that the Defense is
11 considering a waiver of time to comply with that,
12 is that correct?

13 MR. JUHASZ: That is correct, Your
14 Honor. And I should represent to the Court and for
15 the record that Mr. Ingram and I have previously
16 met with Mrs. Roberts and gone over these matters
17 and I've discussed them again with her today. I've
18 advised her of her Constitutional and statutory
19 rights to a speedy trial and likewise have advised
20 her of the implications of waiving the same. She
21 has executed a waiver and I'm confident that she
22 understands the implications of waiving her

1 Constitutional and statutory right to a speedy
2 trial.

3 THE COURT: Mr. Ingram is not able
4 to be here today. There's no problem with
5 proceeding with just Mr. Juhasz? I don't mean that
6 to sound like it come out, but you're willing to go
7 forward with Mr. Juhasz and not both attorneys, is
8 that correct?

9 THE DEFENDANT: Yes.

10 THE COURT: May I see the waiver,
11 please? Mrs. Roberts, you understand that by
12 Constitutional guarantees and various statutory
13 provisions, the State is required to bring you to
14 trial within a certain time period. Should they
15 fail to do that, it would be grounds for moving to
16 have the matter dismissed. This waiver of speedy
17 trial on your part is in effect your motion to
18 permit the State an additional amount of time in
19 which to bring you to trial. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you wish me to

1 approve that?

2 THE DEFENDANT: Yes.

3 THE COURT: I will do so. This
4 matter will be set for trial on November 18, 2002.
5 That's an additional 300 days beyond the statutory
6 time period, which is extended to the State by
7 agreement of the Defense. Is there anything else?

8 MR. WATKINS: Yes, Your Honor. We
9 have worked out the 23rd and 24th of May as motion
10 dates for any motions the Defense would file in
11 this case.

12 THE COURT: That's agreeable?

13 MR. JUHASZ: Yes, Your Honor.

14 THE COURT: Any other matters that
15 occur between now and then or after that May date,
16 we will deal with in due course. I expect both
17 sides will be ready for trial on November 18, 2002.
18 I thank you all.

19 (Court in Recess)
20
21
22

1 Thursday, July 18, 2002; In Open Court at 1:50 p.m.:

2 Hearing on Pre-Trial Motions:

3 THE COURT: Good afternoon. We have
4 various motions before the Court.

5 MR. BECKER: That is correct.
6 There's actually, I believe, four pending motions
7 filed before the Court. There are four Defense
8 motions. They are -- and I am giving you in no
9 particular order, the Defendant's motion to
10 prohibit death qualification of jurors until the
11 Government has established probable cause that the
12 case will proceed to a second phase with an
13 evidentiary hearing requested. Motion to determine
14 proper standards to excuse jurors for cause with a
15 request for hearing, Defendant's motion for
16 comprehensive Voir Dire examination. And then
17 probably the most important motion is a Defendant's
18 motion to suppress, with an evidence request for
19 evidentiary hearing for a statement allegedly made
20 by the Defendant on December 20 of 2001. May it
21 please the Court, with respect to the first three,
22 other than the motion to suppress, the State has

1 filed a Memorandum in response to all three of
2 those motions, and I would like to give those to
3 the Court right now. Copies were provided earlier
4 this afternoon to Defense counsel, so I'll give the
5 State's response to those.

6 The only one I think that we really are
7 concerned about here today, however, is the motion
8 to suppress. It is my understanding that we have a
9 stipulation signed by the parties, actually the
10 attorneys, and I'll basically relate that to the
11 Court. This is in reference to the motion to
12 suppress filed on July 9, 2002.

13 The State would stipulate at this time,
14 that the Defendant's video taped statement that was
15 taken on December 20, 2001 at approximately 8:20
16 p.m., was in fact taken in violation of her Miranda
17 rights, and the State would not use the statement
18 in the State's case in chief. However, the parties
19 are further going to stipulate that the video taped
20 statement was given voluntarily, and that that
21 statement may be used by the State, should the
22 Defendant take the witness stand, for impeachment

1 purposes only.

2 The State is also going to advise and we
3 have advised counsel and Officer Monroe is here,
4 who is the lead investigator, that there were no
5 other inculpatory or exculpatory statements taken
6 from the Defendant on December 20, 2001. The
7 concern that Mr. Ingram had was that the statement
8 was made by Miss Roberts earlier at the home, and
9 Mr. Monroe is here basically to say that he's
10 already spoken to Defense counsel.

11 The only statements were taken from her,
12 they weren't really statements where Miss Roberts
13 wanted to give a statement, Detective Monroe told
14 her he would not take a statement from her at her
15 residence, but instead at the Sheriff's Department,
16 and that is when the video taped statement came in
17 that we're stipulating would not be used in the
18 State's case in chief.

19 I have an entry, reiterating what I just
20 advised the Court of, regarding the motion to
21 suppress, signed by all parties involved. There
22 was recently or just this morning, I think filed by

1 Defense counsel another motion. It is a
2 Defendant's motion to dismiss the indictment, and
3 dismiss the death specifications due to the death
4 penalty being unconstitutional in Ohio. Obviously
5 the State would need time to respond to that.

6 I don't know if Mr. Juhasz or Mr. Ingram
7 have anything further to add today. We would just
8 ask the Court to rule on the other three motions
9 based upon the filings of the Court.

10 THE COURT: Before we proceed here,
11 I see on this entry of stipulation that all parties
12 have signed, that is, everyone is in agreement;
13 correct?

14 MR. INGRAM: That is correct.

15 THE COURT: I'll approve that. Will
16 the Defendant then address each of the motions that
17 are remaining this afternoon?

18 MR. JUHASZ: I think there are only
19 three that Mr. Becker has responded to, because one
20 of them correctly was filed today. One, I believe
21 was filed last week.

22 THE COURT: The proper standard to

1 excuse jurors.

2 MR. JUHASZ: That is one of the ones
3 he filed a response to.

4 THE COURT: The other is asking for
5 comprehensive Voir Dire and Defendant's motion to
6 prohibit death qualifications until probable cause
7 has been shown that the case will proceed to a
8 second phase, which would only be after the Jury
9 has returned a verdict in the first phase, I
10 assume.

11 MR. JUHASZ: That is not what the
12 motion asks for, no. Does the Court want to hear
13 argument on them or take them under advisement?

14 THE COURT: Brief argument.
15 Emphasis on the brief.

16 MR. JUHASZ: I'll do my best. Any
17 particular one of those three that you want to have
18 heard first?

19 THE COURT: No, whatever you are
20 comfortable with is fine.

21 MR. JUHASZ: The one that the Court
22 has mentioned, the one to prohibit death

1 qualification until probable cause is shown. The
2 gist of the motion is essentially this. That the
3 State and Federal institutions require a fair trial
4 by an impartial Jury. That is a Jury of course
5 committed to the presumption of innocence. As we
6 cited in the 1986 Supreme Court of Laukhart against
7 McCree, the United States Supreme Court, even
8 though they said death qualifications are in
9 essence a necessary evil, for a truly capital case,
10 they did and I think here's the gist of the
11 disagreement between the Government's responses as
12 I read this afternoon. And our portion the Supreme
13 Court in that Laukhart opinion did say that they
14 are assuming that the studies that were placed
15 before it were in fact legitimate and accurate in
16 that death qualification, that is, asking the
17 jurors their attitudes about the death penalty if
18 voir diring does in fact produce a Jury which is
19 conviction prone.

20 Our argument is therefore, because death
21 qualifications produces a Jury which is conviction
22 prone, and recognizing that although we disagree

1 with the holding, recognizing that the holding of
2 Laukhart against McCree is that it is a necessary
3 evil in a capital case, we're saying that process
4 of death qualification should only be undertaken in
5 the case which is truly capital, and then the
6 postscript or footnote to that is, of course, this
7 case is indicted as a capital case but that is
8 simply at the invitation of the County Prosecutor.

9 Most lawyers in this State are not
10 comfortable with or familiar with the new
11 grievances of capital specifications. It is
12 perfectly reasonable to believe that the jurors who
13 sat on the Grand Jury were not either, so what
14 we're saying is that the addition of the death
15 specification was at the invitation of the
16 Prosecutor before the Court allows death
17 qualification, that is voir diring those jurors on
18 their attitudes about the death penalty to
19 commence, the Courts should hear some evidence to
20 be satisfied that this is truly a capital case and
21 not one simply indicted that way to give the
22 Government the strategic advantage of having a

1 death qualified and therefore conviction prone
2 Jury.

3 THE COURT: Interesting argument.
4 Mr. Becker.

5 MR. BECKER: Your Honor, I believe
6 that there's a long history in not only Trumbull
7 County, but these Courts of Ohio, Common Pleas
8 Courts of Ohio, procedurally to handle a death
9 penalty case. There's no evidence in this case in
10 fact, that this prospective Jury, which we have not
11 even called yet, is guilt prone or death biased
12 against this particular Defendant. In fact, I can
13 probably, if the Court gave enough time, find you a
14 number of cases where jurors have, using this
15 system of choosing and voir diring a Jury, have in
16 fact found Defendants not guilty, not only of the
17 underlying charges, but also of the death
18 specification, and I don't believe that whether or
19 not there's some studies out there that may
20 indicate that they would be guilt biased or
21 prosecution prone, I don't think we're going to run
22 into that problem in this case, because the Court

1 is going to instruct the Jury properly, that
2 Attorneys are going to instruct the Jury
3 properly -- or rather Voir Dire the jurors
4 properly, that in fact, the Defendant is presumed
5 innocent of all charges, including the
6 specifications, until and such time as they have
7 heard the evidence and until they begin their
8 deliberation. And I think the Court, through its
9 Jury instructions, would properly admonish the
10 jurors, and I truly believe that the jurors will
11 follow the Court's admonish.

12 In addition to that, Laukhart vs. McCree
13 has, of course, provided the proper procedure for
14 handling this type of situation, and I would ask
15 the Court respectfully not to deviate from a
16 procedure which has been upheld numerous times by
17 the Appellate Courts of Ohio, including the Ohio
18 Supreme Court and the Federal Courts.

19 I don't think there's any reason to start
20 tinkering with the proceedings that we have used in
21 the past, and I believe this would be a bad
22 precedent based upon particularly the case law that

1 has been cited by the State, and the fact that this
2 procedure has been overwhelmingly approved time and
3 time again by both Federal and State Courts.

4 THE COURT: You have last word, if
5 you care to.

6 MR. JUHASZ: I would simply say that
7 again, Laukhart vs. McCree assumes those studies
8 are accurate, that death qualification does produce
9 conviction prone Juries. While that is a necessary
10 evil as the Supreme Court found in getting the work
11 done of a capital trial, it has to be recognized
12 that nevertheless, it does give the State an
13 advantage because a conviction prone Jury is at
14 odds with the Fifth Amendment privilege of
15 innocence, and a Jury committed to that prospect.

16 I disagree with Mr. Becker respectfully
17 when he says that we are asking to change the
18 procedure. We're not talking about changing the
19 procedure of death qualification, we're simply
20 saying that before we engage in that step, the
21 Government has to satisfy this Court by the lowest
22 standard of probable cause, that this is indeed a

1 capital case where we should break the rules, so to
2 speak.

3 THE COURT: You would agree that
4 that has never been done? You are asking for some
5 sort of an intermediary call from the Court as to
6 whether or not the Prosecutor got factual evidence
7 that leads to a probable cause finding, even, it is
8 in fact a capital case?

9 MR. JUHASZ: Yes, Sir.

10 THE COURT: The statistics that you
11 refer to referencing a death prone Jury, does that
12 not take into account that out of the general
13 populace, there are going to be a certain number of
14 people, who under no circumstances, would be able
15 to sit. You hear this all the time when you are
16 going through the death qualification. "I couldn't
17 under no circumstances vote for a death penalty."

18 So, by its very nature with the test of
19 Witherspoon and everything we have to follow, you
20 weed those people out, right?

21 MR. JUHASZ: Yes.

22 THE COURT: But if that procedure is

1 not followed, then by just choosing people at
2 random, knowing that certain percentage, whatever
3 it is, I think rather high percentage at times,
4 that would become impossible for the State to have
5 a fair trial if the law says that they have to be
6 able to consider and if the facts warrant finding
7 the death penalty.

8 MR. JUHASZ: That actually goes, I
9 think to the other motion which has to do with the
10 proper standards. I'm not suggesting that we
11 somehow leave on what is called in the case law,
12 Witherspoon excludable. I'm not suggesting that at
13 all. I'm simply saying the Supreme Court in
14 Laukhart vs. McCree, we agree these studies are
15 accurate. A Jury, which has gone through the
16 qualification, the death qualification pro se and
17 had Witherspoon excludables called out, is more
18 conviction prone than the average Jury. And of
19 course, the argument was in some of the lower case
20 that were decided under Laukhart's name was --
21 well, that violates the presumption of innocence.
22 You have got a conviction prone Jury, how can they

1 possibly be able to abide by the presumption of
2 innocence, they are already conviction prone which
3 a Jury has committed to the presumption of
4 innocence should not be.

5 What I'm saying is that the Supreme Court
6 said, "Yes, you're right about that," but there is,
7 and basically, what they said, this is kind of a
8 necessary evil, this is the only way to effectively
9 get Voir Dire done in capital cases, and to the
10 extent that that death qualification process
11 produces conviction prone Juries, we're all just
12 basically going to have to live with it. I don't
13 particularly like that holding or think it is
14 reasonable, but I do agree that is the holding.

15 That having been said, however, before we
16 engage in that, what I think is an extraordinary
17 process of picking a Jury, which the Supreme Court
18 admits is conviction prone and, therefore, less
19 committed to the presumption of innocence than the
20 average Jury. That process, of course, gives the
21 Government an advantage, because instead of the
22 normal Jury committed to the presumption of

1 innocence, they sort of have a leg up if there's a
2 conviction prone Jury, and I'm saying before we
3 engage in that process of picking that type Jury,
4 the Government, other than simply the bare face of
5 the indictment, should try to adduce some evidence
6 that this is indeed a capital case. Because if you
7 look down the road for a second, let's say that
8 they get there, we go through the death
9 qualification process without them having to adduce
10 any evidence before this Court. They then try the
11 case with a conviction prone Jury. That conviction
12 proneness applies not only to the underlying
13 charges, but to the specification. If there's not
14 sufficient evidence for the specifications, will
15 they find the Defendant not guilty of the
16 specification? But the fact of the matter is they
17 then use that conviction prone nature of the Jury
18 to secure conviction on the underlying charge. I
19 hope I'm explaining that clearly.

20 THE COURT: I understand what you
21 are saying. It seems to me somewhat of a leap of
22 faith of some sort here to say that -- I think it

1 is a bad choice of words for him to say conviction
2 prone. A better term I think would be that you
3 have a Jury that has the possibility after you go
4 through the Witherspoon at least considering the
5 death penalty as opposed to the general populace
6 where you would have quite clearly someone on there
7 who would under no circumstances ever make a
8 finding of guilty for the purposes of imposing the
9 death penalty. So, the conviction prone
10 terminology goes to the fact that you have a group
11 of people who at least have agreed they might
12 consider, rather than outright rejecting any
13 capital finding. You understand what I'm saying?

14 MR. JUHASZ: I think I have to
15 disagree with you and here's why. Because if I
16 understand the Court's statement, you are talking
17 about the inclination of the jurors to impose the
18 death penalty. These studies said that when you
19 call out the Witherspoon excludables that you end
20 up, regardless of the death penalty, just in terms
21 of guilt or innocence, these Juries are more
22 inclined to convict than the average juror.

1 THE COURT: How would they possibly
2 know the answer to that though?

3 MR. JUHASZ: Through the
4 methodology -- how do you know any of those things
5 other than the methodology of the study?

6 THE COURT: You will never have
7 Witherspoon excludables make those decisions.

8 MR. JUHASZ: You would have
9 Witherspoon excludables on a non-capital Jury to
10 compare conviction proneness.

11 THE COURT: You are of necessity
12 comparing apples to pears.

13 MR. JUHASZ: I would agree with the
14 Court as far as sentence. I don't think I would
15 agree with the Court as far as conviction on the
16 underlying offenses.

17 THE COURT: Out of all of the other
18 cases compared to capital cases, you get more not
19 guilties on those type. To me it doesn't seem like
20 you are comparing equals. Statistics are --

21 MR. JUHASZ: You may or may not be
22 right about that. I would simply say that the

1 Supreme Court and the opinion in Laukhart was
2 written by Chief Justice Renquist.

3 THE COURT: On your second phase of
4 your argument you are asking a Court then to be
5 gate keeper of some sort over not only what the
6 Prosecutor's actions are, but the Grand Jury,
7 assuming that the two are separable.

8 MR. JUHASZ: Which I would in all
9 due respect characterize as a leap of faith.

10 THE COURT: But I know of no
11 provision of law that gives the Court that duty and
12 perhaps even that right, if you look at the
13 separation powers. It is an interesting argument.
14 I find it very interesting. I'll review it.

15 MR. JUHASZ: The second one that
16 I'll address and then I'll allow Mr. Ingram to
17 address the last one, is the motion to determine
18 the proper standard to excuse the jurors for cause.
19 This is a little bit related to what we just talked
20 about. I have read Mr. Becker's submission this
21 afternoon, and I would have to say that I agree in
22 part and don't agree in part with what he has to

1 say. Because at some points, he cites Witherspoon,
2 and other points, he cites Wainwright vs. Witt.

3 The gist of this argument is I think,
4 incredibly simple, and with due respect to the
5 Supreme Court of Ohio, I don't think they have
6 gotten it right. I'll tell the Court what I mean
7 precisely by that.

8 The statute on excludables for cause
9 which is I believe Revised Code 2945.25, has a
10 specific provision in Division C that deals only
11 with jurors in capital cases; and as we all know,
12 specific provisions govern over general provisions.
13 That specific provision in Division C is a
14 codification of the 1968 Witherspoon decision of
15 the United States Supreme Court. If you look at
16 the syllabus and the holdings in Witherspoon and
17 you look at the statute, they are on a par. That
18 was the law until 1985. In 1985, the United States
19 Supreme Court changed the Federal standard in
20 Wainwright vs. Witt, and what the Ohio Supreme
21 Court does, and the Court will see in the motion
22 that I filed today, there's a section where I have

1 complained rather bitterly what I regard as the
2 ineffective Appellate review of capital cases in
3 Ohio; and one of the things that we mentioned in
4 there is that when Witt came out, the Ohio Supreme
5 Court in State vs. Rodgers suddenly said the
6 standard is now substantially impaired, which is
7 the Witt standard.

8 Our argument is that is absolutely dead
9 bang wrong for Ohio. It is fine for any other
10 State that doesn't have a specific statute that has
11 to rely on the interpretation of the United States
12 Supreme Court and the Federal Constitution in Ohio.
13 We have that statute. We have not abolished,
14 repealed that statute in any way. Every time I
15 have tried to check a case, the Ohio Supreme Court,
16 since Rodgers, the Ohio Supreme Court frankly just
17 ignores it. And they have now said that you should
18 go to Division 0, which is the General, any other
19 reason why the juror can't serve.

20 This may or may not become an issue in
21 this case depending upon what a particular juror
22 has to say on Voir Dire about his or her views

1 about the death penalty. The reason we filed the
2 motion is because if it does come up, if we have a
3 juror who is in essence a Witherspoon excludable --
4 or excuse me, a Witt excludable, we're saying that
5 is not the proper standard, that Ohio has a
6 statute. There are some cases I believe I have
7 cited, including a 1983 case from the U.S. Supreme
8 Court called Michigan against Long which says
9 States can do anything they wanted to as long as it
10 doesn't conflict with or take away more liberties
11 from a citizen than what our interpretation of the
12 Federal Constitution does.

13 It is our submission that in Ohio, this
14 statute actually gives more liberties to a citizen
15 than does Wainwright vs. Witt, therefore, nothing
16 inconsistent with Michigan vs. Long in Ohio,
17 applying the statute.

18 One of the things that I frequently hear
19 when I stand up and argue death penalty motion is
20 has anybody else ever done this? And to answer the
21 Court's question in that regard, other Judges have
22 in fact done this. Judge Krichbaum regularly in

1 Mahoning County does it in capital cases. I also
2 did an appeal in Columbiana County, called State
3 vs. Reynolds, where Judge Bettis employed the
4 statute. When the issue comes up --

5 THE COURT: It is a general
6 proposition of law. You say the statute governs
7 over this ruling, is that what you are saying?

8 MR. JUHASZ: I'm saying that Witt is
9 an interpretation of the United States
10 Constitution. Ohio has a statute that no one has
11 declared unconstitutional, abrogated, repealed or
12 anything else. It does not conflict under the
13 Michigan vs. Long theory. The Federalism theory of
14 Michigan vs. Long, we ought to apply the specific
15 statute rather than the general statute.

16 And as a final thing, even though the
17 Supreme Court since Rodgers has looked at
18 Wainwright vs. Witt and the Division O of the
19 statute, nothing bad has happened to the Judges who
20 went under Subsection C, we assume is the
21 appropriate standard. They didn't get defrocked,
22 they didn't get their license taken away.

1 THE COURT: Mr. Becker?

2 MR. BECKER: I want to clarify
3 something. The reason Witherspoon cited in the
4 State's response to give it historical context to
5 the U.S. Supreme Court's arrival at this issue, is
6 currently the state of the law. I suppose the best
7 way to think about this is, and I'm probably the
8 least experienced here out of any of these four --
9 of the four gentlemen here, but I think we have all
10 tried capital cases, I know the Court has. It is
11 probably a little bit like obscenity. We all know
12 a juror that is not qualified when we see one.
13 Trying to put that in the context of what that is.
14 And I'm sure that we're going to have shades of
15 gray that obviously, they may disagree on.

16 And the State may have a different
17 opinion and ultimately that is the decision that
18 falls on the Court, but I think we're always safe
19 by following the pronouncement of the U.S. Supreme
20 Court, and we're talking if this case were going to
21 trial and actually result in a death conviction, or
22 conviction with a recommendation of death. I

1 believe we're always much more safer following the
2 United States Supreme Court pronouncement in a case
3 such as this, and I believe we should follow the
4 Wainwright vs. Witt standard in determining whether
5 prospective Jurors may be excused for their views
6 on capital punishment.

7 I understand what Mr. Juhasz is saying.
8 I'm not familiar with Judge Krichbaum's
9 proceedings, never having practiced in that Court.
10 I don't know if Mr. Bailey knows the exact
11 procedure used. Maybe it is used since Mr. Bailey
12 is no longer practicing in Mahoning County.

13 I would simply state that we follow the
14 pronouncement in Wainwright vs. Witt. I think
15 those have repeatedly been upheld by the U.S.
16 Supreme Court and Federal Court, specifically the
17 Sixth District and the Ohio Supreme Court, and I
18 know we're much better off following that
19 procedure, and the procedure that has been used by,
20 I would say the majority and probably the
21 overwhelming majority of the Courts in this State.
22 I think we're dealing with an issue that may or may

1 not become a problem down the road, and I am
2 certain that we're going to have, if this case were
3 to go to trial and does go to trial, that
4 obviously, we're going to have some people that are
5 going to fall into this category and we're going to
6 have to make a determination on it.

7 It has been my experience though, and my
8 limited experience in trying capital cases that
9 generally with a reasonable State and/or a
10 reasonable Prosecution and Defense team, that
11 agreement can come in almost 90, 95 percent of
12 those.

13 I would at least ask the Court to defer
14 ruling on this until the time, but I think we're
15 better off following the Federal standards and that
16 would be the State's position.

17 THE COURT: It sounds to me like one
18 of those issues that probably rather than saying
19 one side or the other is correct at this point,
20 that if and when the situation applies, I'll
21 familiarize myself with the arguments and then at
22 that time, I think it would be more appropriate to

1 rule specifically.

2 You have one other motion?

3 MR. INGRAM: Yes. The motion for
4 comprehensive Voir Dire examination. The Supreme
5 Court of the United States and the Supreme Court of
6 the State of Ohio have both recognized that
7 individually sequestered Voir Dire is the preferred
8 method of Jury selection in a capital case.
9 Accordingly, both Mahoning County and Trumbull
10 County have established a practice of individually
11 sequestered Voir Dire in capital cases.

12 For the moment, I believe I'm speaking
13 now for all of the lawyers here. Collectively the
14 four of us have significant death penalty
15 experience. All told, I would guesstimate that
16 between the four of us, we have tried well in
17 excess of 50 capital cases. I say that because
18 Courts and lawyers both know that the Voir Dire
19 process in capital cases is a time consuming and a
20 burdensome procedure.

21 I believe that we'll jointly recommend
22 that we utilize individually sequestered Voir Dire,

1 and that we Voir Dire each potential juror on all
2 issues relating to the prospective juror's ability
3 to serve. That each side be limited to 45 minutes
4 absent some extraordinary disclosure during the
5 Voir Dire, which would justify extra time.

6 We have all tried procedures to try to
7 shorten this. We have tried procedures where you
8 Voir Dire ten, you Voir Dire them individually on
9 publicity and death penalty and then you either do
10 a panel Voir Dire or you Voir Dire ten at a time.
11 None of these alternatives really seemed to save
12 time. That is why we jointly recommend the
13 individually sequestered Voir Dire.

14 Now, we don't want to waste time, either.
15 And we're all bright enough to know that the first
16 thing you should ask a prospective juror is
17 pre-trial publicity, and that is exactly what we'll
18 do. But we respectfully submit that this is
19 actually the most time efficient manner of picking
20 the jurors. We jointly submit that 45 minutes is a
21 reasonable period. That does not mean that we have
22 to use the 45 minutes but --

1 THE COURT: Many times it is much
2 shorter. What we have in the past, I think, the
3 past two capital cases that we have tried, done
4 that very thing. After we have gone through, we
5 weeded out the Witherspoon, then we conduct an
6 ordinary Voir Dire with the group. But up front,
7 each side has an opportunity to ask those questions
8 that are relevant to their side of the case and you
9 avoid the possibility of tainting other jurors that
10 might be sitting there and listening. I have no
11 problem with that. You say that the Prosecutor
12 agrees with that?

13 MR. INGRAM: Yes. We'll also submit
14 a questionnaire. That will be a jointly submitted
15 questionnaire. But I think what we're saying to
16 you is if you limit us to 45 minutes per side, that
17 is a reasonable limitation. Then we can do all
18 issues relating to the juror's ability to serve
19 within that time frame, and we select 32 or however
20 many the Court determines and then we proceed from
21 there.

22 THE COURT: That is workable. In

1 regard to the questionnaire, we have had a lot of
2 arguments in the past. The Defense particularly.
3 The State has a pretty standardized questionnaire
4 that we send out to most Juries. You may have
5 peculiar questions, peculiar to this type of case.

6 I would ask you, and I don't mean to
7 offend you because I know you are both very
8 reasonable as well as qualified. Some of the
9 submissions that I have seen from other lawyers
10 have just been in my mind ridiculous, asking
11 things. You have some questions, put them down,
12 talk them over and if I have to, I'll make a call
13 on it.

14 MR. BAILEY: Mr. Ingram and I have
15 developed a questionnaire in the past that I think
16 we can modify and I think it will cut out most of
17 the questions that Attorneys ask, like background
18 questions, so we'll know the answer in advance. I
19 would rather have the jurors spend two hours
20 filling out a questionnaire and go right into the
21 key questions rather than delving into all of those
22 things in Open Court.

1 MR. INGRAM: I don't think I have
2 ever tried a capital case where the State and
3 Defense have not agreed on a joint questionnaire.
4 Mr. Bailey and I, if we can do it, anybody can do
5 it.

6 THE COURT: Anything else today
7 then?

8 MR. BECKER: I think the only other
9 matter would be to set another pretrial down the
10 road, and maybe at that time, we can address the
11 renewal that is filed today regarding the motion to
12 dismiss the indictment due to the
13 unconstitutionality of Ohio --

14 THE COURT: One thing I find unusual
15 here. I know you are spending a lot of time on
16 your motions, maybe that is the answer. But there
17 are a lot of motions that are made by the Defense
18 almost from necessity. I think everybody at times
19 feels that they are not really necessary, but they
20 are necessary. I would like to, at the earliest
21 opportunity, get the standard motions, if I can put
22 them that way, before the Court so that we can have

1 a hearing and dispose of those.

2 I am always concerned that we go through
3 these, and there are motions left hanging that
4 everyone has forgotten about, even though we all
5 try to make sure that doesn't happen. I always
6 enjoy reading briefs from Youngstown and I haven't
7 been disappointed in any of these. Let's keep this
8 moving.

9 MR. BECKER: We have a trial date
10 schedule of November 18th.

11 MR. INGRAM: Before the next hearing
12 there's going to be more motions in addition to
13 that one. Why don't we set another motion hearing
14 towards the end of August or the beginning of
15 September?

16 MR. BECKER: Nothing further from
17 the State.

18 MR. JUHASZ: Nothing else from the
19 Defense.

20 (End of Hearing at 2:25 p.m.)

21

22

1 Thursday, October 10, 2002; In Open Court at 2:20 p.m.:

2 Hearing on Motions:

3 THE COURT: Does anyone have a
4 proposal as to your preference for handling these
5 or just take them as I have them here?

6 MR. JUHASZ: Fine with us if you
7 take them as you have them.

8 MR. BECKER: One I don't have here,
9 but I'll file a response to that tomorrow.

10 THE COURT: The first one is
11 Defendant's motion to prohibit the Government from
12 using preemptory challenges to exclude the venire
13 men who express concerns about imposing capital
14 punishment. Request for oral hearing. This is the
15 one that they do not wish to exclude potential
16 jurors because they have a concern about imposing
17 the capital punishment. If you have a better way
18 to do this, John.

19 MR. JUHASZ: No.

20 THE COURT: Go ahead, Mr. Juhasz.

21 MR. JUHASZ: If it please the Court,
22 it is not my intent with all of the motions before

1 the Court to simply regurgitate the memos for you,
2 but to simply highlight what the premise of the
3 motion is, and the premise of this motion is
4 actually a logical and we submit a Constitutional
5 extension of the Batson and Powers rule. As the
6 Court knows, the U.S. Supreme Court ruled in Batson
7 that Prosecutors may not preemptorily challenge
8 jurors even though the right to a preemptory
9 challenge is otherwise unfettered, may not
10 preemptorily challenge jurors based upon race and
11 when there's a challenge brought by the Defense,
12 then it is incumbent upon the Government to
13 demonstrate some good faith and race neutral
14 reason.

15 That reasoning was extended of course by
16 the Supreme Court in Powers against Ohio, which
17 said basically the same thing, and Larry Joe
18 Powers, to my recollection was a white fellow, and
19 of course, the Government's argument was that you
20 can't make that Batson challenge, because you are
21 white and you are challenging removal of blacks.
22 And the Supreme Court said, "No, that is not the

1 case. What we're looking for is a fair Jury
2 regardless of the race of the Defendant." The
3 reasoning, of course, is based upon the fact that
4 blacks are a cognizable group in society, and we
5 submit that people who are death scrupled are
6 likewise a cognizable group in society.

7 There are, I believe, experience has
8 shown numerically, that the vast majority of people
9 are somewhere in the middle; that is, they are
10 people who are neither unalterably opposed to, or
11 unalterably webbed to capital punishment. That is,
12 they can fairly consider the life or death
13 alternative.

14 There are on either end of that spectrum
15 what are typically known as Witherspoon
16 excludables, people who are unalterably opposed to
17 the death penalty, and under no circumstances could
18 follow the instructions of law. And under
19 Witherspoon and under the Ohio Statute, they are
20 not permitted to serve.

21 On the other end of the spectrum are
22 those people who, what I prefer to call Morgan

1 excludable, because under Morgan against Illinois,
2 the Supreme Court said that people who may
3 demonstrate by their answer that they are death
4 prone, should likewise be excluded from a Jury.

5 Experience has taught us that the number
6 of people who are just off the position of the
7 Witherspoon excludable, that is people who are
8 generally opposed to the death penalty but disclose
9 in their Voir Dire answer that they could
10 nonetheless consider all of the penalties, that
11 that is a fairly small number, and it is a number
12 that is usually so small in any capital venire that
13 the Prosecutor can simply remove all of those
14 people without stating any basis for doing so by
15 using the preemptory challenge.

16 In essence what they have then done is
17 created a Jury which is more skewed towards those
18 who favor capital punishment. We're simply
19 suggesting that the powers in Batson line of
20 reasoning say that if there are people who they
21 challenge preemptorily, who have indicated by their
22 answer on individual Voir Dire, that they are

1 people who are generally opposed to the death
2 penalty, that the Prosecutor must, under the
3 reasoning of Batson and Powers, give some good
4 faith reason for removing them, other than their
5 opposition to the death penalty, in order that the
6 Defendant have a Jury which is composed of a fair
7 cross section of the community.

8 THE COURT: Mr. Becker?

9 MR. BECKER: Very briefly. I would
10 concur with Mr. Juhasz. I don't want to
11 regurgitate these issues. Quite simply, the
12 State's right to use its preemptory challenge is
13 for this very reason, for any reason as long as it
14 is related to that juror's particular views
15 concerning the outcome of the trial. And I think
16 it is somewhat of a stretch to say, well, when you
17 are talking about Batson in the sense of racial
18 profiling and excluding jurors because of their
19 race or nationality, you are talking now about
20 their determinative outcome of what the jurors want
21 to do in each particular case.

22 And I think because we have granted, we

1 previously granted in this Court, I believe 45
2 minutes for individual Voir Dire for each and every
3 juror in this matter, we're going to be able to
4 sort through each and every one of these jurors, I
5 believe relatively thoroughly, or very thoroughly,
6 the fact of what their position is on the death
7 penalty.

8 And in fact, if the State is not
9 satisfied that a juror, despite their answer, could
10 not impose the death penalty, if the facts warrant
11 and the law allows it in this particular case, the
12 State has every right to remove that juror
13 preemptorily. This issue has been ruled on at
14 least twice, I think directly, by the U.S. Supreme
15 Court, and in each and every instance, it is
16 permissible for the State to use its preemptory
17 challenges to exclude those individuals, who
18 somehow reflect or infer to the Court, or the
19 Attorneys, that they would not be able to impose
20 the death penalty in any particular case.

21 And just as if, and I think that in this
22 particular case, we're going to run into certainly

1 individuals who are on both sides of the issue,
2 there will be individuals who absolutely will not
3 consider, it has been my experience, that there
4 will be jurors, potential jurors, that absolutely
5 will not consider any other penalty but death.
6 They will obviously be excluded.

7 There will be jurors, who for whatever
8 religious, moral or other convictions they may
9 have, will absolutely not impose the death penalty
10 in any particular case.

11 And what we're going to be left with is,
12 I believe, a fair mix of jurors, who will respond
13 either way, that they will consider all of the
14 evidence in mitigation. They will consider all of
15 the penalties before they impose a verdict, whether
16 it be death, life with no parole, life with parole
17 after 30 years.

18 However, I think the State obviously and
19 the Defense will have a preemptory challenge. I
20 believe within those zones and the zone of those
21 jurors that will be not automatically excluded
22 because their views either favor capital punishment

1 or oppose it. Within those views, there are
2 various shades of gray and that is what preemptory
3 challenges are there for.

4 They are going to exercise preemptory
5 challenges on those individuals that may have
6 initially started out and said death is the only
7 option in any murder case, but may have been
8 rehabilitated by the State and said that they would
9 consider mitigation, and that they understand that
10 a death penalty does not have to be imposed in
11 every case, and particularly, in this case. And I
12 think you are limiting the State and its right to
13 exercise its preemptory challenge, which has
14 routinely been upheld or consistently been upheld
15 by the U.S. Supreme Court to allow us to strike
16 those jurors using preemptory challenges who
17 express concerns about imposing it.

18 Because I guarantee you that the Defense
19 is going to do the same thing to those jurors that
20 initially expressed concern that they could not
21 impose any other penalty than death, an eye for an
22 eye type of juror. And I think the law is pretty

1 well settled on this issue, and we would ask the
2 Court to overrule that motion.

3 THE COURT: As one of counsel
4 mentioned here, you get a broad spectrum of
5 society, that is the whole purpose of the random
6 selection. In my experience, and I think in
7 experience of probably all counsel here, from the
8 pool of usual jurors one gets in, you will have
9 more who have a moral or religious opposition to
10 ever participating in the imposition of the death
11 penalty than you do those who feel that an eye for
12 an eye, tooth for a tooth, if you kill somebody,
13 the death penalty should be imposed.

14 Now somewhere in between there, as we
15 have gone over with some of the jurors in this
16 other case, you get the ideal juror, and probably
17 most of those people in the middle are going to
18 say, "Well, I don't particularly like the death
19 penalty, but if the State proves its case beyond a
20 reasonable doubt and the law requires that that be
21 considered," they are willing and able to consider
22 it, and if the facts justify it to impose it.

1 Counsel for the State brings up a good
2 point that if you get somebody that has made some
3 statements which they retract during the course of
4 the Voir Dire, or they initially said, "I am in
5 favor of the death penalty," that person is going
6 to be held suspect in the Defense's mind, and I
7 think that it would be very improper to, because
8 what is good for the goose is good for the gander,
9 and it would not be proper to have the Defense in
10 any way hesitant about exercising a preemptory if
11 they have any doubt at all about the thinking of
12 someone who may be death prone. So I think it cuts
13 both ways.

14 If it is a question of using your
15 challenges, I think that the State, if that is a
16 consideration, is going to lose a lot more of their
17 preemptory challenges on a person who may be
18 hesitant to give the death penalty, as opposed to
19 the Defense being required to strike people that
20 they may have some residual fear that they may be
21 death prone.

22 I think there's a big difference also

1 between the reasoning in Batson and cases that
2 followed, where a person is excluded because of
3 race or possibly religion, or something of that
4 nature. That to me is a much more insidious thing
5 than to have either side in a case like this, use
6 that preemptory challenge to remove somebody who
7 they become convinced cannot give a fair hearing
8 from their side.

9 So for that reason, I would overrule the
10 motion to require Batson, justification on that
11 basis.

12 The next one is to prohibit the
13 Defendant -- that is the same one. Defendant's
14 motion to have reasons for objections and reasons
15 for overruling objections placed on the record. I
16 don't think we need any argument on this. I think
17 it is essential as far as both sides are concerned,
18 and in this Court's view is concerned that anything
19 that transpires during the course of this trial
20 with very rare exceptions, should be placed on the
21 record. What happens many times during the course
22 of any trial is that there will be slight contact

1 at side bar, somebody comes up and says, "Judge, I
2 need ten minutes, I have got to go to the
3 bathroom." What I try to do is tell Mary Ann that
4 to put something on the record that the side bar
5 had nothing to do with the trial. There are times
6 that that does not occur. So keeping that in mind,
7 it is everyone's responsibility to preserve this
8 record, not just mine.

9 And if both sides have times when they
10 feel it is necessary to put something on the record
11 for your protection, you are free to do that at any
12 time. You are free to proffer anything at any
13 time. Sometimes I'll request that you wait until
14 we get through the certain phase, but the record is
15 open to anyone at any time.

16 Defendant's motion to dismiss death
17 penalty specification because the method of
18 execution was unconstitutional. I would like you
19 to just address that briefly.

20 MR. JUHASZ: If it please the Court,
21 one of the things that makes me happy is about
22 being able to address this motion is because I'll

1 get to mention that Robert Bork is quoted in the
2 Memorandum.

3 THE COURT: One cannot go wrong on
4 that.

5 MR. JUHASZ: And Robert Bork, we
6 submit, substantiates our portion because way back
7 in 1976, when after Furman in 1972 when the States
8 had all gone back and tried to enact capital
9 schemes that would satisfy the demands of Furman as
10 they understand the panapley of opinions on that
11 case, then those cases all reached the Supreme
12 Court in 1976, Robert Bork was then the Solicitor
13 General of the United States and argued as an
14 amicus for the United States. I quoted on page
15 eight of the Memorandum, a conversation, a question
16 and answer that he and the late Justice Potter
17 Stewart had, and the reason I put that in there is
18 because I think what Bork is saying is that the
19 Eighth Amendment prohibits punishment which society
20 comes to recognize as being cruel and unusual. Of
21 course, Bork's opinion -- or I'm sorry, Bork's
22 position in Gregg and in the other cases was that

1 the death penalty wasn't. Because when Stewart
2 asked him about, what if we put a guy on the rack
3 and disembowel him and those kinds of things, what
4 would you say about that? He says that we can't
5 return to those types of punishment. What I think
6 is important about that statement though made by
7 then Solicitor General Bork, is at one time those
8 punishments were all regarded as punishments, which
9 society could validly impose through Government in
10 the name of citizenry.

11 Justice Arthur Goldberg in the early
12 sixties kind of caught onto that idea and was
13 actually the first guy to suggest the death penalty
14 may be cruel and unusual per se. He didn't really
15 get many takers on the Supreme Court, but what I
16 think has happened is that you have seen over time,
17 a trend in the methods of execution; that is, we
18 have gone from the firing squad and hanging through
19 the gas chamber to the electric chair. And now
20 just about everybody uses lethal injection, and in
21 fact, Ohio just a few years after they put lethal
22 injection in as an option to the electric chair,

1 now said, "No, you can't use the electric chair at
2 all, you have to use lethal injection."

3 All of those forms of punishment had
4 their own horror stories for want of a better
5 phrase, and if you go all the way back to Kenlar,
6 the case we cite from, I believe it is 1897, where
7 the Supreme Court says that if you are going to
8 impose the death penalty, it can't be pain and
9 suffering, it has got to be the extinguishment of
10 life and not punishment.

11 The history even of lethal injection has
12 demonstrated that that can't, that that is not
13 necessarily the case, that there have in fact been
14 botched executions with legal injections just as
15 there have been with botched executions with
16 hanging and electrocution. And the thing that is
17 not in this motion, but I think is probably an
18 update to this motion, is that although in another
19 sense I think the Atkins decision from this Summer
20 where the Supreme Court, an opinion by Justice
21 Stephens said it is no longer permissible under the
22 Eighth Amendment to execute retarded people. That

1 is not the same thing obviously, as the method of
2 punishment that we're talking about here.

3 But I think it is important, because it
4 is a recognition of the evolving standards of the
5 Eighth Amendment that as time wears on, punishments
6 are deemed by society to be cruel and unusual, we
7 submit that even though Ohio does not use the
8 electric chair any more, and this Defendant, if a
9 Jury convicts her and sentences her to death would
10 be subject to lethal injection, we nonetheless
11 submit that based upon the reasoning that has
12 developed over the years in the Eighth Amendment,
13 juris prudence combined with the fact of botched
14 executions, even with lethal injection, make that
15 method unconstitutional under the Eighth Amendment
16 and also under Section 9 of Article I of the Ohio
17 Constitution.

18 THE COURT: Thank you.

19 MR. BECKER: I'll be very brief. I
20 would point out, I was listening to the radio this
21 morning and there's actually a play, I know
22 Mr. Juhasz cited extensively the Tafero case out of

1 Florida, where I believe Mr. Tafero was actually
2 executed and I believe it was his wife or
3 girlfriend was on death row and she was
4 subsequently acquitted, but there's actually a play
5 about that incident, and really going along the
6 lines of her wrongful conviction. With that said
7 though, this motion, and I think the most important
8 thing to remember and it was highlighted by
9 Mr. Juhasz when he spoke of the Atkins case and I
10 think he properly noted, Atkins dealt with the
11 culpability of the individual. Are we ready to
12 impose culpability? And I would obviously, having
13 read that opinion, say that we have evolved and
14 that is what the Eighth Amendment is about. It's
15 about an involvement of the punishment that our
16 society deems proper. I guess it is a credit to
17 the framers of our Constitution, that they gave us
18 a document on which this country is founded upon
19 that is so fluid and liquid, that we can make these
20 determinations. I can't tell --

21 THE COURT: There are those that
22 disagree with that view, but your view is accepted.

1 MR. BECKER: I think we have a
2 document that gives us the ability to evolve in
3 many ways, not just on this issue, but on many
4 issues that come up involving our Government and
5 our politicians and our punishment, our legal
6 system. But the fact of the matter is, we're
7 dealing with the here and now. I know two hundred
8 years ago what was thought to be cruel and unusual
9 or what was thought not to be cruel and unusual, is
10 probably considered cruel and unusual today.
11 Obviously, two hundred years ago, we had tarrings
12 and featherings. We had public hanging. We had
13 public hangings within the last one hundred years
14 in this country; and certainly, if we were to try a
15 case in 1902 as opposed to 2002, our standards
16 would be different. Just as our standards will
17 probably be different in 3002 than they are here in
18 2002 or 2,102.

19 Our problem is that we have to deal with
20 the here and now, and the here and the now today,
21 as we stand here on October 10, 2002, is that Ohio,
22 through just a recent decision within the last two

1 years, State vs. Carter has permitted and has
2 acknowledged or has said that lethal injection is
3 not cruel and unusual punishment under the
4 standards as they exist in this here and now. And
5 Mr. Juhasz, in his motion, has not cited one case
6 and I don't believe there exists as we stand here
7 today, one case from the United States, any Court
8 in this country that says that lethal injection is
9 a cruel and unusual punishment.

10 Again, I can't speak for what the future
11 may hold. But we have to deal with the here and
12 now and the here and now is that this case, it is
13 scheduled for trial on November 18 and the current
14 state of the law, as it exists is that lethal
15 injection has not been found by the Supreme Court
16 of the State of Ohio, nor the Courts of any other
17 jurisdiction in this country to be unusual
18 punishment that would warrant under the Eighth
19 Amendment, a prohibition of its use or a
20 possibility as its punishment in any trial.

21 We would ask that the motion be
22 overruled.

1 THE COURT: I think that
2 Mr. Juhasz's real assertion here is, as the one
3 justice he cited, the position was that any taking
4 of life is cruel and unusual punishment. We live,
5 however, first of all, any Government's ultimate
6 power of any people, has the right to set its own
7 standards. That is done through the legislature.

8 In England at one time, the late sixteen
9 hundreds, I believe there was 230 some capital
10 offenses. Children as young as eight years old
11 were put to death. Women were ordered to death,
12 but very seldom executed. Our standards have
13 changed over the years. Some of those were brought
14 about by decisions of Courts, but primarily it was
15 the change in the feeling of the people in general,
16 that one should not lose one's life for stealing a
17 loaf of bread. And the last century, there's been
18 a big change, cruel and unusual punishment is a
19 very subjective thing depending on a person's
20 personal point of view.

21 I agree with Mr. Becker that society's
22 view does change, but it is not up to the Courts to

1 implement those changes. It is up to the
2 legislatures. Only in extremely, when a
3 legislature uses extremely bad judgment where
4 there's some directs infringement on the
5 Constitution, should the Courts be tempted to
6 strike down a law or to make new law. And there's
7 a question whether the Court should ever do
8 anything other than just say, "Go make another law.
9 It is unconstitutional what you did." But our
10 Courts have been very prone to make law and they
11 are not elected, particularly the Courts in the
12 higher benches.

13 The legislature has promulgated law,
14 which we must deal with that says that lethal
15 injection is not cruel and unusual punishment, and
16 until the legislature sees fit to change that, or
17 some Court of Appeals takes it upon themselves to
18 say that, that it is cruel and unusual punishment,
19 this Court is bound to follow the law as it exist.

20 So that motion is denied. The next is
21 Defendant's motion to have reasons for objections
22 and reasons for overruling objections placed on the

1 record.

2 MR. JUHASZ: That's a duplicate.

3 THE COURT: Defendant's motion to
4 dismiss death penalty specification -- that is the
5 same thing. Defendant's motion to dismiss death
6 specifications due to inadequate Appellate review
7 requests for hearing. Now this is one I find
8 interesting here. Mr. Juhasz?

9 MR. JUHASZ: If it please the Court,
10 when I mentioned a few moments ago in the previous
11 motion about the Furman and the other cases decided
12 in 1976, that reviewed what the legislatures had
13 done after Furman -- one of those cases in 1976, of
14 course, was Gregg against Georgia. And when Gregg
15 made arguments in the United States Supreme Court
16 about why Georgia's efforts, after Furman to
17 requite its death penalty law were still
18 unconstitutional, he complained about a number of
19 things. And the Supreme Court, in addressing, and
20 I guess at the same time were buffing those
21 challenges and finding that Georgia statute to be
22 unconstitutional said, "One of the things that we

1 find to be of significance and why we find this
2 Georgia statutory scheme to be unconstitutional is
3 that there's a built in system for Appellate
4 review." If there are mistakes made, somebody up
5 the line is going to pay attention to them. And if
6 there are mistakes indeed made, correct them.

7 It is particularly noteworthy, I think,
8 that in 1980, four years after Gregg, in a case
9 called Godfrey against Georgia, the United States
10 Supreme Court actually declared unconstitutional,
11 one of the subsections of the Georgia death penalty
12 scheme that it upheld in 1976, and paraphrasing its
13 holding in Godfrey, what it basically said is in
14 Gregg, we entrusted the Courts of Georgia with the
15 obligation and the responsibility to engage in
16 effective review of these death sentences and in
17 essence with regard to that particular subsection
18 that was being litigated in Godfrey to give it a
19 narrow reading because that was the argument that
20 the statute was over broad. And the Supreme Court
21 of the United States in Godfrey said, "The Courts
22 didn't do that. And so, therefore, we're finding

1 that particular provision of the Georgia code to be
2 unconstitutional."

3 I use that as the starting premise
4 because it seems to me that in 1976, in Gregg when
5 they said, "We're serious about this Appellate
6 review being a necessary and indispensable part of
7 insuring reliability for the process of imposing
8 death, we really mean it." And that is what they
9 said in Godfrey, "We're showing you guys we really
10 mean it, because you in Georgia didn't do that and
11 so we're declaring that provision to be
12 unconstitutional."

13 So I don't think that there's really any
14 question, but that effective Appellate review is an
15 indispensable part of the process of imposing
16 death. And the Eighth Amendment, and 14th
17 Amendment reasons for that are to provide a
18 safeguard to ensure that the death penalty is
19 reliably determined when it is in fact imposed.

20 All of that having been said, I have in
21 the Memorandum, gone through for you, and trust me
22 when I say this, that I could find others where

1 Ohio, what I'll call post Lockett or beginning with
2 Jenkins Appellate review of death penalty cases, is
3 seriously lacking. The four areas that I discussed
4 in Memorandum have to do with mercy and the
5 limitations upon mitigation, the so-called
6 independent weighing that the Appellate Courts do.

7 The application of non-aggravating
8 circumstances, and in each one of these cases, I
9 have gone through in the Memorandum and pulled out
10 the portions of the opinion, so that you can see
11 that these aren't simply my opinions about what the
12 Supreme Court is saying. These are actually what
13 they are saying and the fourth of those areas of
14 course, proportionality, which has become perhaps
15 the most fallacious of all is the things that are
16 addressed in Ohio, Appellate review. If you then
17 take those areas, and others that I'm sure the
18 Court can probably think of on its own, having
19 reviewed Ohio Appellate death penalty cases and
20 compare them with a well known study which came out
21 in the past couple of years done by Professor
22 Liebman and his colleagues, called a broken system.

1 And basically, what Liebman and his
2 colleagues did was went through a bunch of states,
3 and studied all of their death penalty cases, and
4 he divided them down into areas where
5 Constitutional error was found at State direct
6 appeal, State post conviction, Federal habeas. The
7 error rates on a National average are about 40 or
8 41 percent. If you then compare what Ohio has done
9 post Lockett or post Jenkins, whichever phrase you
10 prefer to use, you will see that only about ten
11 percent of the death sentences in Ohio have been
12 vacated, and sometimes it has been the conviction
13 and death sentence vacated. Sometimes only the
14 death sentence vacated, but the important point is
15 that when you combine all of those together, it has
16 only been about ten percent.

17 Now, I'm trying to not to be too cynical
18 about this. It means either one of two things. It
19 either means that in Ohio we're imposing the death
20 penalty so well and so reliably, that with the
21 scrupulous Appellate review, only ten percent of
22 the cases is there serious Constitutional error; or

1 I submit that the other option is actually the
2 option which is that the Appellate review is so
3 effective, is so lacking, as to be completely
4 ineffective and that in reality the error rate in
5 Ohio is probably approaching or exceeding the
6 National average, and we're simply not catching
7 them because of --

8 THE COURT: It is built into the
9 process.

10 MR. JUHASZ: I hate to say that, but
11 there's no other honest way for me to say this.
12 Many times these Appellate opinions seem to be
13 result oriented juris prudence. They are bad
14 facts. They are cases where just about every human
15 being has a natural revulsion to what the Defendant
16 has done, where it is not difficult to understand
17 why a Jury said, "You have to die for these crimes
18 that you have submitted." And then of course, the
19 cases reach the Ohio Supreme Court, and they are
20 stuck with the proposition of now you want us to
21 take this bad case, and --

22 THE COURT: Do you recall how the

1 intermediate Appellate step was done away with?

2 MR. JUHASZ: I do indeed. One of
3 the motions I don't have yet filed that I am
4 finishing up has to do, and I think you and I
5 talked about that quite a bit during the Santine
6 case, because I filed it then. It was fairly new
7 then.

8 Incidentally, as an aside if I may, one
9 of the reasons for that, of course, that whole
10 Issue One was done in response to a then Governor
11 Voinivich's State of the State address made to the
12 General Assembly, about how after the Lucasville
13 riots, we have to do something about the death
14 penalty. It is taking too long to put these guys
15 to death. There are too many appeals.

16 And the legislature acted with what I
17 regard as sort of uncharacteristic of Lackerty in
18 getting something going and getting the
19 Constitutional Amendment on that Fall and passed.

20 What I find interesting about that is I
21 now have several cases which are pending in the
22 Ohio Supreme Court; and frankly, it is taking

1 longer to get the cases decided down there
2 because -- and a couple of them, incidentally, are
3 old pre Issue One cases, which means they are cases
4 that have gone, in this case, the Seventh District
5 Court of Appeals, they are still sitting down there
6 languishing. I suppose reason and common sense
7 would say, "Well, those are cases that they should
8 get to first, because there's at least been some
9 narrowing of the issues and discussion of the
10 issues by looking at the Appellate Court opinion."
11 But not withstanding that, it is not happening.

12 I know Stephen Vrabel's case, my
13 recollection is that last May, Mr. Vrabel filed
14 some pro se motions to dismiss his appeal and to be
15 executed. And we were required by the Supreme
16 Court to respond to those. That was last May; that
17 is May of 2001.

18 It is further my recollection that our
19 brief had been filed in that case about a year
20 before that. So Mr. Vrabel's case has been pending
21 in the U.S. Supreme Court for over two years.
22 Whatever it was that Issue One was designed to

1 accomplish clearly isn't happening.

2 At any rate, all of that having been
3 said, the premise of this motion is that there's
4 not effective Appellate review going on in Ohio,
5 and I know some people would say, "That is not up
6 to me. I'm a Trial Judge -- I'm not an Appellate
7 Judge, I can't make this call." I frankly don't
8 agree with that. I think that the Court can make
9 this call, because I think we have provided enough
10 information where the Court can conclude that there
11 is, in fact, not the type of effective Appellate
12 review that guarantees that the death penalty, if
13 its imposed in this case, is going to be reliably
14 imposed and that is a violation of both the Federal
15 and State Constitutions.

16 THE COURT: Thank you. Mr. Becker?

17 MR. BECKER: I'll be very brief on
18 this issue. The State has submitted and in its
19 Memorandum, and I would tend to disagree. I think
20 the former applies to the logic that I do believe
21 Ohio is doing a good job of its Appellate review.
22 The last time I checked the Attorney General

1 statistics approximately two years ago, and I
2 realize a number of the Issue One cases had not,
3 were not included in these statistics. I believe
4 Ohio was near or if not last in the length of time,
5 from conviction to actual execution. And of
6 course, there were a number, I believe, at this
7 time that this study came out by the Attorney
8 General's Office, Ohio had only executed one or two
9 individuals, because the Court recalls there was a
10 lengthy period of time between executions in Ohio,
11 I believe close to 40 years. But Ohio, if not
12 last, one of the last of the 30 some odd states
13 that had the death penalty that in the time that it
14 took from actual conviction to the imposition of
15 that sentence.

16 With that said, and I certainly agree
17 with what Gregg vs. Georgia says, that the
18 Appellate -- Appellate scheme is just as important
19 as what goes on at the trial phase. However, I
20 would point out to the Court that since the
21 decision in Gregg vs. Georgia in 1976, the United
22 States Supreme Court has never found any Appellate

1 scheme of any state unconstitutional and overturned
2 a conviction based upon its Appellate scheme. I
3 believe we do have it right here in Ohio. I think
4 that is evidenced by the fact that we do have death
5 penalty sentences overturned.

6 I believe there's a lot of reasons, if we
7 want to sit here we could spend all afternoon,
8 probably the rest of the week, discussing why
9 decisions in other states are overturned at a much
10 greater rate than they are here in Ohio.

11 One of the reasons is, I think it isn't
12 so much the Appellate Court process, but it is the
13 trial process we engage here in Ohio. And I
14 believe it is a reflex that only those very limited
15 cases are first of all, charged and prosecuted
16 under the death penalty scheme of Ohio. And I
17 don't mean to boil it down to too simple, but it is
18 a very difficult thing to impose a death penalty on
19 a person and very well it should be.

20 And I think in Ohio, we take that
21 responsibility seriously. I think that is
22 reflected in the number of convictions. I believe,

1 as of last year, there were 208 or 209 people on
2 death row. Obviously there are many, many death
3 penalty cases filed much more than that, probably
4 filed each year, throughout this state.

5 So, I think when you boil it down to, it
6 is too simplistic to say, "Well, only ten percent
7 of our cases are being overturned on appeal." That
8 is where we're at at the end. But what we're
9 putting into that system and how well are we
10 running those through the trial Court system before
11 they got to the Appellate level?

12 I think it is a simplistic way to argue
13 the question, is that not a lot of our cases are
14 overturned on appeal, and therefore, other
15 jurisdictions have a much higher rate of death
16 penalty cases being overturned on appeal. And my
17 answer to that would be quite simply, maybe a lot
18 of those jurisdictions are putting people on death
19 row that shouldn't have been there at the Trial
20 Court in the first place. That is where their
21 systems may be flawed.

22 In any event, I would stress to the Court

1 that I'm unaware of, and I know that since Georgia,
2 or Gregg vs. Georgia, there has been no ruling by
3 the -- or by the U.S. Supreme Court that any
4 States, Appellate review procedure is
5 unconstitutional, and certainly Ohio is included in
6 that. And Ohio Appellate scheme has never been
7 declared unconstitutional. And we would simply ask
8 that the motion be overruled.

9 THE COURT: This is a very
10 interesting argument that the Defendant puts forth
11 here. You all know at common law, there was no
12 right of appeal from the judgment of the Court, and
13 our Constitution merely says both the State and
14 Federal was set up. The Supreme Court are called
15 upon to set up all of the rules and regulations
16 thereunder. I often question why we needed the
17 Constitutional Amendment, and the answer to that
18 probably is that because the Supreme Court did not
19 see fit to do, to vary the process that they grew
20 over time and that involved a multi-layered, at
21 least two-layer appeal process. One could argue
22 that two heads are usually better than one. That

1 the Supreme Court has a tremendous burden and that
2 for them to be called upon to be as thorough as, in
3 evaluating any case, as would be done when a case
4 has gone through that same process below, and then
5 they, the Supreme Court reviews it, and has all of
6 the various personnel check out everything, it is a
7 good example of how a popular thought -- that
8 sounds good, in theory can be addressed through a
9 Constitutional Amendment, and you end up with a
10 system that is worse than you had to begin with.

11 The Constitution should not be amended
12 for such things, in my opinion. But here's the
13 problem here. John, you mentioned and you
14 mentioned further in your brief certain statistics,
15 and I think you say in here, that Ohio was not
16 included in that Liebman study. Mr. Becker makes a
17 good point that we could argue forever and that is
18 because none of us have any empirical evidence in
19 which to decide. I would think the only way a
20 motion of this nature would have much of a chance
21 at this level would be if you had a good Brandeis
22 type brief that gave me something to chew on, and I

1 don't have that, and I don't think it would
2 probably be possible for you to amass that.

3 So, on that basis, I'll respectfully deny
4 your motion. Defendant's motion to suppress
5 references to the Jury that a verdict of death is
6 only a recommendation. Mr. Juhasz?

7 MR. JUHASZ: Judge, I don't have an
8 awful lot to say about this. I know that you have
9 read the memos. I would simply really like to
10 point out, I think two things, and that is that I
11 think we have made clear in the Memorandum that the
12 Supreme Court of Ohio is not applying Caldwell vs.
13 Mississippi and they haven't really given a good
14 reason for not doing so, and the Caldwell opinion
15 makes it pretty clear, the dangers of letting a
16 Jury know that if you tell them that what they do
17 is a recommendation, they are going to have some
18 false sense of security. I think it is in this
19 Memorandum, if not it is in another one, I think
20 it's in this one. I think there are now only eight
21 cases in Ohio out of all of the cases that
22 Mr. Becker mentioned, where there are people on

1 death row. And then of course, there were other
2 capital cases that were indicted and other things
3 happened to them.

4 You and I had an enjoyable experience a
5 couple of years ago up in Ashtabula where we had
6 one such case that was capitally indicted, but the
7 Jury found the Defendant not guilty of the capital
8 specifications.

9 The point for present purposes is that I
10 believe there are only eight cases in Ohio where
11 the Jury actually recommended the death sentence,
12 where a Judge didn't do it. So, we do have some
13 empirical data here because we have, I think, 212
14 people on death row and eight guys where the Judge
15 reversed the Jury's finding. And as you know, in
16 Ohio, unlike states like Florida, a Judge can't
17 give the death sentence unless the Jury first
18 returns that verdict. So we know that the numbers
19 are basically two to 12 versus eight -- or I'm
20 sorry, 212 versus eight.

21 That having been said, it is important to
22 keep from the Jury this notion of it only being a

1 recommendation, because in virtually factual
2 reality in Ohio when the Jury returns a death
3 sentence, it becomes a death sentence. And so, if
4 anything, I think that the failure to follow
5 Caldwell in Ohio is even more dangerous, because
6 the empirical data we do have says to them, if you
7 think it is only a recommendation, that is a false
8 sense of security.

9 THE COURT: Let me stop you. Our
10 scheme is not the only one of its nature. There
11 are several other states and I can't give a number.
12 This issue has been litigated in those other
13 states, has it not?

14 MR. JUHASZ: The issue of the
15 recommendation?

16 THE COURT: Yes.

17 MR. JUHASZ: Yes.

18 THE COURT: Do you have any
19 knowledge of the statistics in the other case as
20 opposed to, you say, there's only been eight that
21 were granted here, and there's 212 or whatever on
22 death row?

1 MR. JUHASZ: No, I don't.

2 THE COURT: Do you not suspect that
3 they would be similar to ours?

4 MR. JUHASZ: I think I would be
5 inclined to agree with the Court on that, yes.

6 THE COURT: Go on.

7 MR. JUHASZ: You mentioned and I
8 certainly understand the Court's thinking and
9 reasoning with regard to the last motion about the
10 Brandeis brief, I didn't actually produce a
11 Brandeis brief, but I think we have more empirical
12 data here than we do the other one.

13 THE COURT: I agree with you.

14 MR. JUHASZ: I think that highlights
15 the reason, and I really don't understand it,
16 because it is certainly possible, even if you
17 overrule every other motion the Defendant files in
18 a capital case, it is possible to try a death
19 penalty case and to do it under the presently
20 existing recognized scheme that has been approved
21 by the Ohio Appellate Courts without talking to
22 this Jury about a recommendation.

1 And when you look at the numbers and
2 compare that fact to the real danger that the Court
3 recognized in Caldwell is that they will say, "Hey,
4 if we're kind of on the fence about giving this guy
5 the chair, we're not really," or I shouldn't say
6 the chair, I should say, "the needle now, we're not
7 really adept at this stuff. He did a real bad
8 thing, so let's go ahead and do it, and if we're
9 wrong, we have got these Courts to fix it."

10 And the only other thing that I would
11 like to say which is a pet peeve of mine is that
12 the Ohio Supreme Court has not addressed the
13 Caldwell arguments in lieu of the State
14 Constitution. In fact, even though they keep
15 shooting me down about this and chastised me about
16 this in State vs. Sean Carter, I think that I have
17 textural support for the fact that they have never
18 analyzed any provision of the death penalty under
19 the Ohio Constitution, and I think that is
20 something the Court has to be mindful of in
21 considering this motion.

22 MR. BECKER: The Court is well

1 versed on this issue I would point out, and sitting
2 here discussing these numbers and it is all fine
3 and good and stand here and say, "Well, there's
4 eight cases and 212 guys on death row," but I think
5 from our own practical experiences which is what we
6 have to bring into any Courtroom, at least I hope
7 we bring in a lot of that as our practical common
8 sense is this Court's very own experience that I'm
9 familiar with is that within the last, I believe
10 within the last two years, a Defendant was
11 convicted of aggravated murder, death penalty
12 specifications, and this Court prior to -- and
13 we're talking about a stage not even getting to the
14 death penalty and that recommendation being given
15 to the Court, but this Court on its own motion,
16 gave a verdict, or judgment notwithstanding the
17 verdict in the Stanley Adams case on the morning --

18 MR. INGRAM: Did that involve Sarah
19 Kovoor?

20 MR. BAILEY: Yes.

21 MR. BECKER: I don't know if the
22 Court kept any statistics on how often that has

1 happened. I know it has happened in this Court
2 within the last two years and this very County, and
3 I'm sure it has happened in other jurisdictions.
4 So, we may not be getting the full picture when we
5 say only 3.7 percent of death recommended verdicts
6 have been not imposed by the Court, and those
7 recommendations have not been followed because we
8 have again another layer, before we even get to
9 that point.

10 I would like to see, it might be
11 interesting to see how many death penalty
12 convictions of Juries returned in this state, and a
13 judgment notwithstanding the verdict has been
14 returned by the Court not to proceed to the death
15 penalty stage. Because I am certain it has
16 happened before. But despite all of that, the
17 Court is well aware of the Caldwell arguments, and
18 I don't want to belabor the issue any more than it
19 should be.

20 Quite simply, I don't see -- this is a
21 fact of the way the scheme is set up, and I don't
22 see any other way around it. I don't think we can

1 pretend that the big elephant that walked in the
2 room isn't an elephant, and I don't know of any
3 psychological studies that are going to say if
4 someone knows their responsibility may be
5 overturned by the Court, they would shirk from it.

6 I think it has been my experience, not
7 only jurors, but Juries and Judges, find it a very
8 difficult thing to sit down, and I realize that
9 approximately 70 percent of the United States
10 population is in favor of the death penalty, but
11 the number of death penalty cases that go to trial
12 in which the verdict is recommended is death, I'm
13 sure is well below 70 percent. And I submit to the
14 Court that the reason it is, is because it's very
15 easy for you to stand out on the street corner or
16 go to the local bar or discuss with your family at
17 turkey dinner at Thanksgiving that yes, this guy
18 should get the death penalty and comment on the
19 news, but it is a wholly different matter for 12
20 people to get together and walk into that Jury room
21 and sign a piece of paper that they know is going
22 to possibly result in the death of another human

1 being.

2 And along those same lines, I have had
3 discussions with Judge McKay, and Judge McKay told
4 me -- and this is a former Prosecutor, in fact the
5 former chief of the Prosecutor's Office here in
6 Trumbull County, the very first death penalty case
7 that he had in front of him, in which the Jury
8 recommended that the death sentence be imposed, he
9 has personally told me that that order, for him to
10 sign that document, sat on his desk literally the
11 entire day and consumed him the entire day as to
12 what he was doing and the ramifications of what he
13 had done. And I suspect, that just like his
14 feelings that he's expressed to me, that each and
15 every juror that is charged with that duty, takes
16 that awesome responsibility just as seriously when
17 they step back into the Jury room. And I would
18 tend to argue to the Court, that the fact that they
19 are told that that is a recommendation only, that
20 doesn't relieve them of their awesome
21 responsibility and their awesome duty. And it has
22 been my experience and I believe there's no

1 empirical studies on it, but I believe that if you
2 were put, even the staunchest Prosecutor, into a
3 Jury room and asked him to sign a piece of paper in
4 which the ultimate death of another individual
5 could result, that person would do some very
6 serious soul searching and some long and hard
7 thinking, even if they knew it was a
8 recommendation.

9 With all of that said, I think the law is
10 pretty clear in this area, and we would ask that
11 the Court overrule the motion.

12 THE COURT: I think Mr. Becker makes
13 a very good point and that is that again my
14 observation, and I think probably all counsel, is
15 that jurors take their job very seriously. They do
16 take it as a sacred obligation. I don't think that
17 they ever lightly grant a recommendation of death.
18 The problem that I have with this is that I agree
19 with both sides to a degree. I think there's
20 always the danger that if the Jury feels that a
21 recommendation is merely a recommendation, and if
22 they would take the position, Mr. Juhasz propounds

1 that, "Well, we think he ought to get the death
2 penalty, but let's go ahead and do it, and if we're
3 wrong, the Judge will set it aside." They don't
4 understand the criteria. They have no way of
5 knowing the Judge merely has to review the evidence
6 to see if the evidence supported their verdict. I
7 think since the law states that it is a
8 recommendation, that it is not improper to use the
9 term.

10 I have already used the terms and part of
11 Voir Dire in this case we're presently trying, I'll
12 go this far; however, I'll accept a proposal
13 because I think there's nothing wrong with
14 addressing the problem that is of concern to the
15 Defense. And that is based on the statistics that
16 you are putting out. I would think it not improper
17 to inform the Jury on the final instructions that
18 the law refers to this as a recommendation;
19 however, I would caution you that a Court is only
20 empowered to set aside your verdict if and when. I
21 don't know how anybody could disagree with that
22 type of an instruction. We'll deal with it at the

1 time.

2 MR. BECKER: For purposes of this
3 hearing, that motion is going to be under
4 advisement.

5 THE COURT: Motion under advisement,
6 if and when we get to that point in the trial.

7 Defendant's motion to dismiss indictments
8 or in the alternative to dismiss the death
9 specifications because the death penalty in Ohio is
10 unconstitutional.

11 MR. JUHASZ: Judge, believe it or
12 not, I think that I'm actually comfortable relying
13 on the Memorandum. There are set forth in here, a
14 number of reasons. The reason I'm comfortable
15 relying on the Memorandum is first of all, I am
16 comfortable and confident that you read it and you
17 will look at it again if need be, before ruling on
18 the motion.

19 Secondly, many of the issues that are
20 discussed in there about why the death penalty is
21 unconstitutional, we have discussed in dealing with
22 other motions, we have talked about the conviction

1 proneness of the Jury the last time we were here.
2 We have talked about issues, even today, of Batson
3 and things like that in terms of getting a Jury
4 that is not a fair cross section of the community.
5 It is --

6 THE COURT: I always enjoy your
7 briefs on the review of the American history and
8 the law, and I assume you are writing them and not
9 Mr. Ingram.

10 MR. INGRAM: I can assure you
11 Mr. Ingram is not.

12 MR. JUHASZ: The Memorandum is 150
13 pages long, and for that reason, I don't think it
14 is necessary to say anything else.

15 THE COURT: I'll review these again.
16 I haven't found your response to that.

17 MR. BECKER: All of the State's
18 responses are included here. We have one motion
19 that the State is bringing today.

20 THE COURT: That particular motion
21 at the beginning of the new death penalty scheme
22 has been reviewed repeatedly. I think that the

1 Supreme Court recently just said, we have ruled on
2 this so many times that it is whether you have
3 raised anything that is new.

4 MR. JUHASZ: The only thing I would
5 say, and I just mentioned a few minutes ago is that
6 I take great issue with them, and I think they got
7 a little bit upset with me, because in the Carter
8 brief, I attached the portions of Jenkins and Marr,
9 where they purported to rule on the death penalty
10 under the Ohio Constitution. And so I think the
11 only thing that bears emphasis with regard to this
12 particular motion is I still contend nobody has
13 done that in Ohio.

14 THE COURT: The motion for
15 comprehensive Voir Dire.

16 MR. JUHASZ: If I may, Mr. Becker
17 and I did talk about that if the Court recalls,
18 last time we were here. We agreed to a procedure
19 for Voir Dire, 45 minutes where we would deal with
20 all of the issues, and I think Mr. Becker and I
21 have agreed in our discussions today, that based
22 upon that, that motion would actually be moot

1 because we have agreed on a procedure.

2 THE COURT: You have been through
3 enough cases up here to know the procedure we
4 usually use. You always reserve the right to bring
5 up any motion.

6 MR. BECKER: Every jurisdiction is a
7 little bit different here. My recollection was, we
8 were going to do 45 minutes individually for each
9 juror, including everything, death penalty.

10 THE COURT: Let me suggest this.

11 MR. BECKER: General and venue and
12 everything.

13 THE COURT: The two main issues that
14 I think lend themselves to the individual Voir Dire
15 is the question of venue, and the Witherspoon
16 questions. Your ordinary other questions, I think
17 you do that when you get the 12 in the box,
18 otherwise the individual Voir Dire, you take 45
19 minutes and you don't even get started on the
20 thing. I ask various questions when we start that
21 first day, we have this, this and this, hold your
22 hand up. We go through and we weed those out.

1 When we start the individual Voir Dire,
2 pretty much there's no absolute, but pretty much
3 limited to the question of venue. Did you get a
4 fair trial here, and the question of whether this
5 person has anything that would disqualify him on
6 the second phase. If there's some other matter
7 that is relevant, of course, but, this isn't the
8 time to go into other questions that would properly
9 be put to the Jury once you have 12 seated there,
10 and start your weeding out selection, as you
11 usually would do in an ordinary case.

12 Now is there any thoughts contra to that?

13 MR. INGRAM: I actually thought we
14 addressed this issue to its conclusion the last
15 time. I believe that we jointly submitted to you a
16 proposal where each side would be allotted 45
17 minutes --

18 THE COURT: No matter what you
19 wanted to ask.

20 MR. INGRAM: In toto, you are to
21 Voir Dire that juror in 45 minutes.

22 THE COURT: You mean then after we

1 do this individually, when we put them in the box,
2 you just issue your strikes?

3 MR. INGRAM: You go to your strikes.

4 THE COURT: I have no problem with
5 that.

6 MR. BECKER: We were just having
7 this discussion earlier today. I don't think we
8 formulated it yet, but we're in agreement that we
9 would like to use a questionnaire. I believe it
10 would save a lot of time and we may not even need
11 45 minutes per juror. But just to show you how
12 different jurisdictions are, where I was at
13 previously, the jurisdiction, we would bring in
14 batches of jurors and generally 15 to 20, general
15 Voir Dire them, including venue, and go ahead and
16 Voir Dire them generally as to their
17 qualifications.

18 THE COURT: I like that idea, but
19 they hear things they wouldn't have heard
20 otherwise.

21 MR. BECKER: There's pros and cons
22 to every system. What it saved us doing we didn't

1 have to individually them death penalty wise. Once
2 we got 32 individually death qualified, we have got
3 our 16 per se. Including our preemptory. Whatever
4 the number is we needed to be bullet-proof to get
5 our jurors. We could do that and we saved
6 ourselves the time of doing that. I think this
7 process may go much quicker than we anticipate if
8 we get 45 minutes for each individual for
9 everything and we have the questionnaires to go
10 along in addition to that 45 minutes.

11 THE COURT: I have no problem with
12 trying that.

13 MR. INGRAM: We have also agreed by
14 the way, to jointly submit a questionnaire which --

15 THE COURT: You will get one
16 together?

17 MR. INGRAM: We'll agree on one.

18 MR. BECKER: It is my understanding
19 that perhaps Mr. Ingram and Mr. Bailey have pretty
20 much formulated one that they have used in the past
21 and been successful with and been comfortable with.
22 I believe it was in Mahoning County.

1 MR. INGRAM: If Mr. Bailey and I can
2 agree, anybody can agree.

3 THE COURT: Motion to determine
4 proper standard to excuse jurors for cause.

5 MR. BECKER: I thought we discussed
6 that one before. I believe the Court has already
7 ruled on that. I believe the only one I have left
8 from the Defense side is the motion for alternating
9 Voir Dire.

10 MR. JUHASZ: Which again, that was
11 one basically to say that we are -- the State goes
12 first and then we go first with the next one, since
13 we have agreed on a procedure. We would simply
14 withdraw that motion as being moot, since we have
15 come up with a procedure.

16 THE COURT: Very good.

17 MR. BECKER: The only other motion
18 that we have today, and I just filed today and the
19 Court has and Defense counsel was given today, the
20 State is asking for motions for the Defendant to
21 submit to handwriting exemplars. As the Court is
22 probably aware, there are a number, a large number

1 of letters that the State intends to use in
2 evidence. I don't know if they want to stipulate
3 to that. I think there's probably statements that
4 they were her letters that have not been suppressed
5 at this point, but we would ask that that motion be
6 granted. It was also granted in the co-Defendant's
7 case, State of Ohio vs. Nathaniel Jackson, and we
8 would either employ the Ohio Bureau of Criminal
9 Identification to obtain those handwriting
10 exemplars or the Trumbull County Sheriff's
11 department.

12 MR. INGRAM: We just got that
13 motion.

14 MR. BECKER: I apologize for that.

15 MR. INGRAM: We would like a little
16 bit of time to look at it. As to the merits of the
17 motion requesting a handwriting exemplar in
18 relation to these letters, there's a pending motion
19 to suppress, which raises serious questions as to
20 the admissibility of those letters. I am only
21 bringing that to your attention. The State may
22 intend to introduce them, but we don't know yet,

1 whether those letters are admissible evidence.

2 THE COURT: You have to determine
3 that at the time.

4 MR. INGRAM: What we would like is 7
5 days to respond to that motion.

6 THE COURT: Okay. That is fine.

7 MR. BECKER: The only other matter,
8 I don't know if Mr. Juhasz or Mr. Ingram wants to
9 address it. Perhaps, do you want to approach the
10 bench? I believe that takes care of the motions
11 today.

12 I would note for the record, I provided
13 fourth supplemental discovery today, including five
14 video tapes and one compact disk to Defense
15 counsel. I apologize, I only had one copy for
16 each. I guess they will have to share.

17 THE COURT: Are all pending motions
18 other than those that have been reserved for ruling
19 have been ruled on.

20 MR. BECKER: They have a pending
21 motion to dismiss -- or I'm sorry, a pending motion
22 to suppress and we have the motion for the

1 handwriting exemplar.

2 MR. INGRAM: Before we retire in
3 chambers, there may be the necessity to revisit the
4 motion to suppress that we dealt with the last
5 time, because new fruits of that conversation have
6 come to light which may require that that issue be
7 revisited.

8 MR. BECKER: We may have a
9 stipulation on that in any event, because of the
10 previous ruling.

11 (End of hearing at 3:30 p.m.)
12
13
14

15 Thursday, January 2, 2003; In Open Court at 9:55 a.m.

16 MR. BECKER: This is 01-CR-793.
17 State of Ohio versus Donna Roberts.

18 We're here for a pre-trial today.
19 There's been a pending motion to suppress for maybe
20 60 days or so. We have talked to the assignment
21 clerk and scheduled that motion to suppress for
22 February 26, 2003 at 9:00. I think there may be

1 one or two other outstanding motions that may be
2 argued at that point. But at this time, the motion
3 to suppress is the bulk of that issue.

4 We already have a trial date scheduled.
5 I don't believe we need another pre-trial before
6 that date. The trial date is April 7.

7 THE COURT: The motion to suppress
8 is February 26?

9 MR. BECKER: Yes. February 26, a
10 Wednesday.

11 THE COURT: Very good.

12 MR. INGRAM: Thank you.

13 (End of hearing.)
14
15
16
17
18

19 Wednesday, February 26, 2003:

20 Hearing on Defendant's Motion to Suppress Evidence:

21 (In Open Court at 1:10 p.m.)

22 THE COURT: I notice Mr. Juhasz is

1 not here today.

2 MR. INGRAM: He's not.

3 THE COURT: I have something I wish
4 you to give him. Nothing to do with this case.

5 MR. INGRAM: I would be happy to.

6 THE COURT: Mr. Becker, are you lead
7 on this?

8 MR. BECKER: We anticipate calling
9 six witnesses on this motion to suppress, and we'll
10 waive opening statements.

11 MR. INGRAM: The Defense waives
12 opening statements, but would move for a separation
13 of witnesses, and I believe both parties have
14 already separated the witnesses.

15 MR. BECKER: Yes. My first witness
16 will be Ralph Roberts.

17 THE COURT: For the record, that
18 motion will be granted.

19 RALPH ROBERTS
20 being duly sworn according to law, on his oath,
21 testified as follows:

22 DIRECT EXAMINATION BY MR. BECKER:

1 Q. State your name for the record, please.

2 A. Ralph Roberts.

3 Q. Where do you live at?

4 A. 931 Kirwin Drive, Youngstown.

5 Q. Mr. Roberts, are you related to a Donna
6 Roberts?

7 A. Yes, she's my sister.

8 Q. I want to direct your attention to December
9 12, 2001, specifically a Tuesday
10 afternoon -- or I'm sorry, Tuesday
11 morning, would have been just after
12 midnight, very early in the morning.
13 Were you contacted by I believe the
14 Austintown police?

15 A. Yes.

16 Q. What was that in reference to?

17 A. Said there was a problem at my sister's house
18 and I was to go there.

19 Q. Did you know, and I assume Donna is your only
20 sister?

21 A. I have two sisters.

22 Q. Did they specify what sister?

1 A. Yes.

2 Q. Which sister?

3 A. Donna.

4 Q. Do you know where Donna was living on December
5 12, 2001?

6 A. Yes.

7 Q. Where was that at?

8 A. In Howland. I don't know the name of the
9 street. Fonderlac.

10 Q. You knew where this house was on Fonderlac?

11 A. Yes.

12 Q. Did you in fact go to that residence?

13 A. Yes, I did.

14 Q. Approximately what time did you get to that
15 residence?

16 A. As early in the morning, 1:00, 2:00.

17 Q. In the morning?

18 A. Yes.

19 Q. Did you go with anyone?

20 A. My wife.

21 Q. What is her name?

22 A. Rita.

1 Q. When you got to the residence, can you in your
2 own words, describe what you saw when you
3 got there?

4 A. I walked into the house and they wouldn't let
5 me --

6 Q. Who is they?

7 A. The police, would not let me go to the kitchen
8 area. They directed me towards the
9 hallway in the bedroom and they told me
10 that my brother-in-law was dead and my
11 sister was there and she was hysterical.

12 Q. And that was your brother-in-law would be
13 Robert Fingerhut?

14 A. Yes.

15 Q. At the time, did the police say, did they say,
16 "Donna is a suspect, we're going to
17 arrest her"?

18 A. Not at all.

19 Q. What did they tell you about Donna, that she
20 was distraught?

21 A. Very much so.

22 Q. And did you speak to an officer, I don't know

1 if you know his name, by the name of Paul
2 Monroe?

3 A. Probably.

4 Q. Do you remember him?

5 A. Yes, I believe I do.

6 Q. Did he explain to you what the police were
7 doing there?

8 A. There was a homicide situation.

9 Q. And did he explain what they were going to do
10 at the house?

11 A. Homicide situation and to the effect that they
12 wanted to go through the house.

13 Q. And was Donna there when this was being said?

14 A. He directed the question to Donna.

15 Q. And what was Donna's response?

16 A. Specifically, I don't know, but it was
17 positive, do what you got to do, or yes,
18 okay. There was no negative there at
19 all. She was very cooperative.

20 Q. And she decided to leave with you that evening
21 or that morning?

22 A. That is the reason they called me to take her

1 away from the situation.

2 Q. Did you in fact leave with her?

3 A. I left with her, yes.

4 Q. And your testimony is you never heard your

5 sister in any way, shape or form, say no,

6 I don't want you looking through my house

7 or get out of my house?

8 A. No.

9 Q. Nothing like that?

10 A. No.

11 MR. BECKER: I have nothing further.

12 CROSS EXAMINATION BY MR. INGRAM:

13 Q. Good afternoon, Mr. Roberts.

14 A. Hi.

15 Q. We have met before?

16 A. Yes.

17 Q. When you arrived at the Fonderlac residence

18 and approached the house, as entering the

19 house, what did you observe?

20 A. I observed there was a lot of commotion in the

21 kitchen area and my sister was there

22 yelling, "Oh, my God, Oh, my God." She

1 must have said it a thousand times. She
2 was very hysterical.

3 Q. Yelling --

4 A. "Oh, my God, Oh, my God."

5 Q. Was she yelling, "Oh, my God, Oh, my God," in
6 a conversational voice or quietly?

7 A. Hysterically.

8 Q. And what part of the house was she in, do you
9 know?

10 A. The bedroom and the hallway area.

11 Q. Can you estimate for me the number of
12 policemen that you observed while you
13 were in that house?

14 A. I don't know. I guess there was paramedics
15 there also and I know there was a
16 paramedic woman there with Donna at the
17 time. To estimate, I would say four or
18 five people in the house.

19 Q. When you say that there was a paramedic woman
20 with Donna, could you describe the
21 interaction between this paramedic woman
22 and Donna Roberts?

1 A. Seems she was trying to comfort her and also
2 get the clothes together to come over to
3 my house, and my wife and the paramedic
4 and Donna proceeded to do that.

5 Q. And in your presence, did the paramedic ever
6 suggest that perhaps Donna should go to
7 the hospital?

8 A. Not to my knowledge.

9 Q. Did you observe the paramedic take Donna's
10 blood pressure?

11 A. No.

12 Q. All told, how long do you think you were at
13 the house from the point when you got
14 there until you left?

15 A. Ten, 15 minutes at the most.

16 Q. And during that ten or 15 minute period, did
17 you attempt to engage Donna in
18 conversation?

19 A. It was pretty hard. She was very hysterical.
20 She was not saying too much of anything,
21 just, "Oh, my God, Oh, my God."

22 Q. Would you ask her questions?

1 A. Not really.

2 Q. Would she say things to you?

3 A. No, not to my knowledge. If I would have
4 known this was going to happen, I would
5 have taken notes. I really don't know.

6 Q. Do you know if whether on December 12 of 2001,
7 your sister was under the care of a
8 psychiatrist?

9 A. No, I did not know that.

10 Q. You have described for Mr. Becker a police
11 officer saying something to Donna about
12 what that police officer wanted to do at
13 the home. Did you hear that police
14 officer use the term crime scene? Do you
15 recall that?

16 A. I think that is what he said, yes, crime scene
17 or something along that line. Indicating
18 it was a crime scene. Whether Donna
19 comprehended what he said under her
20 condition, I don't know.

21 Q. Do you recall that officer saying that they
22 would be at the house for quite some

1 time?

2 A. Yes, he said, "We'll be hear awhile." They
3 were going to go overhead and things like
4 that.

5 Q. Did the police officer say, "We're going to be
6 here for awhile," and use the crime scene
7 phase before he asked Donna if it was
8 okay?

9 A. I really don't know. I really can't say.

10 Q. Did he ever, did this police officer ask Donna
11 a question or did he simply make a
12 statement of fact?

13 A. He said to the effect that this is a crime
14 scene and we have to go through the house
15 and things like that and she cooperated
16 with him.

17 Q. She did not respond negatively?

18 A. No negative. She was very cooperative, even
19 as long as I can remember, throughout the
20 investigation the days following that.

21 Q. Who gathered Donna's belongings, do you
22 recollect?

1 A. I think it was the paramedic and my wife.

2 Q. Do you know if she got -- if she gathered any
3 medication?

4 A. I think so, but I'm not sure. You might have
5 to ask my wife that.

6 Q. Did she take any medication in your presence?

7 A. No.

8 MR. INGRAM: I have no further
9 questions.

10 REDIRECT EXAMINATION BY MR. BECKER:

11 Q. Mr. Roberts, did anything on the night of the
12 12th or the early morning hours of the
13 12th, indicate to you that the police
14 felt Donna Roberts was a suspect in
15 Mr. Fingerhut's death?

16 A. No.

17 Q. Eventually, I think on the next morning, you
18 did take Donna home and she arrived at
19 your house?

20 A. Right.

21 Q. And I don't know if you were asleep or awake,
22 but the next morning the police came by

1 with some paperwork?

2 A. I believe so.

3 Q. You don't recall that?

4 A. I don't recall offhand, but they were over at
5 my house a few times, interviewing me.

6 Q. Your wife may have a better recollection of
7 that?

8 A. She might.

9 Q. To reiterate on the 12th of December, in the
10 morning hours when you drove from your
11 home in Austintown to the Fonderlac
12 address, there was no impression that you
13 got that Donna Roberts was a suspect in
14 this crime or they weren't arresting her,
15 she was never in handcuffs?

16 A. Never.

17 Q. Wasn't shackled?

18 A. No.

19 Q. And the police never indicated to you or
20 pulled you aside and said, "Hey, we think
21 your sister has something to do with
22 this"?

1 A. Not at all.

2 MR. BECKER: Nothing further.

3 MR. INGRAM: Nothing further.

4 THE COURT: You may step down.

5 Thank you.

6 MR. BECKER: We would call Rita
7 Roberts.

8 RITA ROBERTS

9 being duly sworn according to law, on her oath,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. BECKER:

12 Q. Would you state your name, please?

13 A. Rita Roberts.

14 Q. And Miss Roberts, where do you live at?

15 A. Kirwin Drive in Austintown.

16 Q. And are you the wife of Mr. Ralph Roberts?

17 A. Yes.

18 Q. How long have you been married?

19 A. 34 years, 35 years. That is a tough one.

20 Q. Mr. Roberts has a sister by the name of Donna?

21 A. Yes.

22 Q. And I wanted to direct your attention to

1 December 12th of 2001, in the hours
2 sometime after midnight. Did the police
3 from Austintown call your residence?

4 A. They actually came to the residence.

5 Q. They actually came to the residence?

6 A. Yes.

7 Q. And do you know what the police wanted when
8 they came to your residence on December
9 12, 2001?

10 A. They wanted us to make a phone call to Donna
11 at her house.

12 Q. Which was located where at the time?

13 A. In Vienna.

14 Q. Howland?

15 A. Howland, yes.

16 Q. And did you in fact call there?

17 A. Yes.

18 Q. And was it you or your husband?

19 A. It was my husband.

20 Q. After your husband phoned the residence in
21 Howland, did you and your husband go
22 somewhere?

1 A. Yes. We went to the residence.

2 Q. And when you got to the residence, can you
3 describe the scene that you saw when you
4 got there?

5 A. We entered through the front door and I went
6 to the bedroom where Donna was at the
7 time.

8 Q. And how did Donna appear to be to you?

9 A. Very upset, distraught.

10 Q. Was she saying anything?

11 A. Just, "Oh, my God. Oh, my God."

12 Q. Did she say anything about Robert Fingerhut,
13 that you recall?

14 A. No. She did not.

15 Q. Were there any police there?

16 A. There were. I didn't see them but I know they
17 were there.

18 Q. At some point, were you present when some
19 officers spoke to Donna in the residence?

20 A. No, I stayed with Donna in the bedroom.

21 Q. At some point, some officers did speak to her
22 though before you guys left with Donna if

1 you recall?

2 A. I am assuming they did.

3 Q. You weren't either in the room or Donna had
4 left the room or do you recall how it
5 happened?

6 A. They may have spoken to her before we got
7 there.

8 Q. And eventually, you left with Donna?

9 A. Correct.

10 Q. Now later in that same date on the 12th --
11 well, let me ask you this. Going back to
12 the house at Fonderlac, was there any
13 impression that you had that Donna was a
14 suspect in anything? Did they ever
15 handcuff her?

16 A. No.

17 Q. Were they interrogating her or questioning her
18 about Mr. Fingerhut?

19 A. No.

20 Q. And your impression of Donna that night was
21 that -- was what?

22 A. She was distraught, very upset.

1 Q. Do you know over what?

2 A. The fact that her husband was shot, dead in
3 the kitchen.

4 Q. And you left with Donna, the police let you
5 leave with her, correct?

6 A. Right.

7 Q. And you and Ralph and Donna went to your
8 residence in Austintown?

9 A. Correct.

10 Q. Now, the next morning, or actually that same
11 morning of December 12th, did some
12 Howland police officers show up at your
13 residence?

14 A. I know they came to our residence. I can't
15 swear that that was the day.

16 Q. Do you recall what their purpose was in coming
17 there?

18 A. No, I didn't speak with them at all.

19 Q. How was Donna at that time?

20 A. She had remained very quiet. Hadn't said
21 much. Still very upset.

22 Q. And did the officers speak to her at your

1 residence?

2 A. I'm sure they did, yes.

3 Q. At any point, either on the 12th when you were
4 at the Fonderlac residence or on the 12th
5 when they were at your residence in
6 Austintown, did you ever hear Donna
7 indicate that she did not want the police
8 at her residence?

9 A. No.

10 Q. Did you ever hear her indicate that they were
11 to leave her residence?

12 A. No, I did not.

13 MR. BECKER: I have nothing further.

14 CROSS EXAMINATION BY MR. INGRAM:

15 Q. Good afternoon, Mrs. Roberts.

16 A. Good afternoon.

17 Q. When you arrived at the Fonderlac residence,
18 you go into the bedroom where Donna is
19 located?

20 A. Correct.

21 Q. When you enter that bedroom is there anyone
22 else in there besides Donna?

1 A. The woman, I believe she was a Coroner, was
2 there.

3 Q. And what was that woman doing?

4 A. I felt she was keeping Donna under control,
5 trying to calm her, and then once family
6 was there, she left the room.

7 Q. When you entered the room, there was a female
8 in the room that you thought was with the
9 Coroner's office who was trying to keep
10 Donna calm?

11 A. Yes.

12 Q. You described Donna's emotional state for
13 Mr. Becker as very upset and distraught.
14 What do you mean by that? How was she
15 acting?

16 A. She was in tears. She was standing, didn't
17 want to sit. She was very agitated.

18 Q. Moving around?

19 A. Right.

20 Q. Did you try to talk to her?

21 A. Yes.

22 Q. Would you say things to her?

1 A. Yes.

2 Q. Was she able to respond to you?

3 A. She didn't respond much at that point, no.

4 Q. When you were in the bedroom, did you assist
5 in gathering Donna's personal belongings,
6 so that she could accompany both you and
7 Ralph back to your home?

8 A. She pretty much did that herself, gathered her
9 things that she was going to take. I
10 went with her.

11 Q. Did you see Donna gather or did you gather any
12 medication?

13 A. I don't recall.

14 Q. Do you know if on December 12th of 2001,
15 whether Donna was under the care of a
16 psychiatrist?

17 A. I did not know that, no.

18 MR. INGRAM: No further questions.

19 MR. BECKER: I have nothing further.

20 THE COURT: Thank you. You are
21 excused.

22 PATROLMAN ALBERT RAY

1 DIRECT EXAMINATION BY MR. BECKER:

2 Q. Would you state your name for the record,
3 please?

4 A. Officer Albert Ray, Howland Police Department.

5 Q. How long have you been with the Howland Police
6 Department?

7 A. 26 years.

8 Q. I want to direct your attention to December
9 12, 2001, were you on duty just after
10 midnight on that date?

11 A. Yes, Sir, I was.

12 Q. And do you recall being called to a residence
13 at 254 Fonderlac?

14 A. Yes, Sir.

15 Q. Do you recall what the reason was you were
16 dispatched there?

17 A. The 911 center dispatched myself and Officer
18 Pollcino to that address in response to a
19 hysterical female calling the 911 center.

20 Q. Were they able to describe what she was
21 hysterical about?

22 A. Not to our knowledge, no.

1 Q. Were you able to discern what the call was
2 about?

3 A. No.

4 Q. Before I go any further, Officer Pollcino,
5 he's no longer employed with the Howland
6 Police Department?

7 A. He's not. He's retired.

8 Q. Just for the record, he has a medical
9 condition?

10 A. He does have a medical condition, yes, Sir.

11 Q. I believe he's suffering from a life
12 threatening illness?

13 A. Yes, he is.

14 Q. Going back to December 12th of 2001, can you
15 describe for this Court, what you
16 observed when you first got to the 254
17 Fonderlac address?

18 A. As I pulled up out front of the residence,
19 myself and Officer Pollcino parked our
20 cruisers on the street, and as we looked
21 towards the front of the residence, we
22 observed Donna Roberts coming from the

1 open front door of the residence yelling
2 and screaming hysterically, running
3 towards our location out by the street.
4 We met her about halfway between the
5 house and the roadway. Officer Pollcino
6 took her aside and she had made mention
7 during some of the rambling that was
8 going on, that something had happened to
9 her husband and he was inside the
10 residence.

11 Q. Did you then go in the residence?

12 A. Yes, Sir. Myself, and Officer Pollcino and
13 Donna Roberts went into the residence
14 together. Entering the residence, we
15 were in the foyer area. To the right was
16 a living room, to the left was a dining
17 room, which then led into a kitchen area.
18 Officer Pollcino took Donna Roberts into
19 the living room area to the right. I
20 proceeded to check the residence. Going
21 through the dining room and into the
22 kitchen, once I came into the kitchen, I

1 found the victim laying on the floor at a
2 doorway that led out into the garage.

3 Q. And was the door opened?

4 A. The door to the garage, the man door, yes.

5 Q. And in the garage area or on the steps area,
6 did you observe anything?

7 A. As I looked over the deceased, I stepped
8 carefully over top of him, observing the
9 bloody condition of the body and also in
10 the walls and the floor underneath or
11 around the body. I stepped into the
12 garage looking for possible suspects or
13 any evidence or something that would lead
14 me to believe what took place here, and
15 as I started to go into the garage, I
16 noticed on the first step, that was one
17 step between the residence and the garage
18 floor, a small blue steel revolver laying
19 on the step.

20 Q. At that point in time, did you believe this
21 was a homicide or suicide or did you have
22 any impression?

1 A. I didn't draw any conclusions at that point.

2 It could have been either at that point.

3 Q. Do you know if any other officers who were at
4 the scene drew any conclusions whether it
5 was a homicide or suicide initially?

6 A. No.

7 Q. And the reason you were in that residence was,
8 I assume, at the urging of Miss Roberts?

9 A. That is correct.

10 Q. Do you recall how she told you to come into
11 the house or what she told you about
12 coming into the house?

13 A. We met her in the front yard of the residence,
14 and she was yelling and screaming. Some
15 of what we could make out, I made out of
16 her hysterical statements was her husband
17 was down in the kitchen, which led me to
18 go into the kitchen area to look for him.

19 Q. And after checking the residence, was a
20 decision made to call the detectives from
21 your department?

22 A. Yes, Sir. Based on what I observed there,

1 myself and Officer Pollcino jointly
2 decided to contact our investigators and
3 have them come out to the scene as a
4 precautionary measure to make sure
5 everything was okay or depending on what
6 the outcome was going to be.

7 Q. At this time, did you suspect that Donna
8 Roberts had killed the man that was in
9 the doorway?

10 A. No, Sir.

11 Q. Was she giving you any indication that she had
12 done this?

13 A. No, Sir.

14 Q. And Eventually, I believe on December 12,
15 2001, Detective Paul Monroe of the
16 Howland Township Police Department, along
17 with Detective Dillon, and I believe
18 maybe some officers from the Sheriff's
19 department did arrive?

20 A. Yes, Sir, that is correct.

21 Q. Also Miss Roberts' brother, Ralph Roberts was
22 called to that scene, is that correct?

1 A. Yes, Sir.

2 Q. Were you present when Detective Monroe asked
3 for permission to search the house and
4 process that house as a crime scene?

5 MR. INGRAM: I object to that
6 question. It assumes a fact not in evidence.

7 MR. BECKER: Let me rephrase it.
8 I'll strike that.

9 THE COURT: Sustained.

10 Q. Were you present in that residence when
11 Detective Monroe had a conversation with
12 Donna Roberts?

13 A. Yes, Sir.

14 Q. Do you know what that conversation was
15 regarding?

16 A. One of the conversations that I overheard was
17 in the room -- bedroom of Donna Roberts,
18 and Detective Monroe -- the conversation
19 from Detective Monroe to Donna Roberts
20 was that he did believe this was a crime
21 scene and that this would need to be
22 processed. The residence would need to

1 be processed as a crime scene, meaning
2 that we would have to look everywhere for
3 evidence and/or possible suspects, and
4 her response was, "Do whatever you have
5 to do to catch him."

6 Q. To catch the suspect. There was no indication
7 that she was, didn't want them there?

8 A. No.

9 Q. Was there any indication that she was a
10 suspect at that point?

11 A. Not to my knowledge.

12 Q. And in fact, Donna Roberts did leave with her
13 brother and sister-in-law?

14 A. I didn't see that, no.

15 Q. But they were there?

16 A. Yes, Sir.

17 Q. And their purpose there was to --

18 A. They were called to the scene to aid her.

19 Q. Do you recall the mood that Donna Roberts was
20 in during the time period and time frame
21 that you were there at the Fonderlac
22 residence?

1 A. I recall spending some time with Donna in her
2 bedroom consoling her. At a time she
3 would be very hysterical and other times
4 she would be very calm.

5 Q. During the period of time that Detective
6 Monroe was speaking to her and explaining
7 this crime scene and how he was going to
8 have to look for evidence, did she --
9 what type of mood was she in?

10 A. Somber and excited at times. She wanted to
11 make sure that we caught whoever did
12 this.

13 MR. BECKER: I have nothing further.

14 CROSS EXAMINATION BY MR. INGRAM:

15 Q. My name is Gerry Ingram, I just have a couple
16 of questions. You are dispatched from
17 the 911 center right around midnight?

18 A. That is correct, approximately midnight.

19 Q. And the dispatcher, whether that would be a
20 Howland police dispatcher or 911
21 dispatcher, whoever you talked to, told
22 you it was regarding a call from a

1 hysterical female?

2 | A. That was their summation, yes.

3 Q. And you and Officer Pollcino, were you in one
4 cruiser or two cruisers?

5 | A. Two separate cruisers.

6	Q. Who arrived first?
---	-----------------------

7 | A. We arrived together, him being in front of me.

8 Q. And it is my understanding that both of you
9 pulled your cruisers on the street, in
10 front of the residence on Fonderlac?

11 A. That is correct.

12 Q. And as you look at the residence, you observed
13 Donna in the area of the front door,
14 yelling and screaming and acting
15 hysterically?

16 | A. Yes, Sir.

17 Q. Did you hear what she was yelling, what she
18 was screaming?

19 A. To the best of my recollection, she was
20 hysterical and it took us a while to get
21 out of her what she was upset about, but
22 from what we were able to obtain, it was

1 something in regards to her husband and
2 he was down in the kitchen area.

3 Q. It took a while for you to obtain from Donna
4 information to enable you to decide what
5 she was hysterical about, is that
6 correct?

7 A. Small amount of time, maybe ten, 15 seconds.

8 Q. And she was having a difficult time giving you
9 information?

10 A. Trying to make sense of what she was saying
11 was a problem, yes.

12 Q. And actually when you were talking with
13 Mr. Becker, I believe you stated that she
14 was rambling?

15 A. Correct.

16 Q. So, you would ask her questions, and she
17 couldn't always give you appropriate
18 responses?

19 A. That is correct.

20 Q. And as a matter of fact, while Donna Roberts
21 was in your presence on December 12th of
22 2001, her emotional state ran the full

1 gamut from hysteria to calm?

2 A. That is correct.

3 Q. Have you ever seen anyone in the state of
4 shock?

5 A. Yes, Sir.

6 Q. Did she appear to be in shock to you?

7 A. She could have had some of the symptoms.

8 Q. And what symptoms would those be?

9 A. As you described, a roller coaster of
10 emotions.

11 Q. Now I'm going to ask you a couple of questions
12 and I don't mean to sound silly, I have
13 got to get this clear in my own mind.
14 The first thing you want to do is protect
15 everybody, including yourself?

16 A. That is correct.

17 Q. When you enter the residence, do either you or
18 Detective Pollcino conduct a protective
19 sweep of the residence, the interior
20 portion?

21 A. As we all three entered the residence, a
22 visual sweep was done immediately, yes.

1 Q. And the results of that visual sweep led you
2 to conclude that it was safe to enter the
3 house?

4 A. That is correct.

5 Q. Detective Pollcino then accompanies Donna to
6 the living room area?

7 A. To the right, as you entered the door to the
8 right would have been the living room
9 area.

10 Q. And you proceed to the kitchen?

11 A. That is correct.

12 Q. Paramedics arrive?

13 A. Within, after we secured the scene, we called
14 them and allowed them into the scene,
15 yes.

16 Q. What do you mean by secured the scene?

17 A. Checked the residence to see if there were any
18 suspects, any problems, areas of danger.

19 Q. This is a little more than the visual
20 inspection that you told me about
21 earlier?

22 A. That is correct, a little more thorough.

1 Q. And is it both you and Officer Pollcino the
2 that conduct the protective sweep or just
3 you?

4 A. Both of us.

5 Q. You go into the basement?

6 A. Yes, Sir.

7 Q. You go into all of the rooms?

8 A. Yes, Sir.

9 Q. And open the closets?

10 A. We checked the -- primarily any windows, we
11 checked any doors leading inside and
12 outside. All of the windows we found
13 were locked and secured. The sliding
14 glass door on the rear of the residence
15 was locked and secured. To my knowledge,
16 the areas that I checked were mostly in
17 the south end of the residence.

18 Q. This is before you permitted emergency medical
19 personnel to enter the residence?

20 A. Yes, Sir.

21 Q. This is also before you called dispatch and
22 asked for Detectives Monroe and Dillon?

1 A. It was approximately the same time, within a
2 few minutes of each other.

3 Q. Well, before the arrival of Detectives Dillon
4 and Monroe?

5 A. They were approximately 20 to 30 minutes after
6 our initial arrival.

7 Q. And how long before their arrival, by their, I
8 mean Detective Dillon and Detective
9 Monroe?

10 A. That was the 20 to 30 minutes after we
11 initially arrived, they arrived.

12 Q. You complete the protective sweep before they
13 arrive, correct?

14 A. Correct.

15 Q. Do you also do a sweep of the exterior portion
16 of the residence?

17 A. Yes, Sir, Officer Pollcino went out and walked
18 around the outside of the residence.

19 Q. And he reported the results of that exterior
20 sweep to you?

21 A. That is correct.

22 Q. And he told you there was nothing unusual?

1 A. That is correct.

2 Q. And that again is before Detectives Dillon and
3 Monroe arrive?

4 A. No, I believe that that time frame would have
5 been the time I was calling them, he went
6 outside.

7 Q. If you are calling them on the phone, they
8 haven't arrived yet?

9 A. Correct.

10 Q. He does his protective sweep of the exterior
11 before they arrive on scene?

12 A. That is correct.

13 Q. And when you called them, you secured the
14 residence as a crime scene?

15 A. Yes, Sir.

16 Q. After the emergency medical people tell you
17 that Mr. Fingerhut is deceased, it is my
18 understanding that you asked the
19 emergency medical personnel to attend to
20 Donna Roberts?

21 A. Yes, at the request of Patrolman Pollicino, I
22 believe, said they might want to see her

1 just to make sure she's okay.

2 Q. Did you have some concerns over her well
3 being?

4 A. Sure.

5 Q. What led you to request or --

6 A. As a cursory thing, we do that.

7 Q. Because of her hysteria?

8 A. That is correct.

9 Q. You overheard as you described for Mr. Becker,
10 a conversation between Detective Monroe
11 and Donna Roberts, while she was in the
12 bedroom; do you recall describing that
13 conversation?

14 A. Yes, Sir.

15 Q. Were medical personnel still in the bedroom at
16 that time attending to Donna?

17 A. No, Sir.

18 Q. They had gone?

19 A. I don't know where their presence were, but
20 they were not in the bedroom with myself
21 and Donna and Sergeant Detective Monroe.

22 Q. Do you know if the emergency medical personnel

1 ever recommended that Donna go to the
2 hospital?

3 A. No.

4 Q. Do you know whether they ever took her blood
5 pressure?

6 A. No.

7 Q. Now the conversation you overheard between
8 Donna and Detective Monroe, is Detective
9 Monroe telling Donna that her residence
10 on Fonderlac is a crime scene and it
11 needed to be processed as a crime scene?

12 A. That is basically the gist of the
13 conversation, yes, Sir.

14 Q. Well, you want to take a few seconds and
15 search your memory bank and try to
16 recollect Detective Monroe's exact words,
17 if you can?

18 A. I don't recall the exact words, no.

19 Q. What is your best recollection of what
20 Detective Monroe said to Donna Roberts?

21 A. That the residence was a crime scene and it
22 would need to be processed as a crime

1 scene.

2 Q. And after that statement was made to Donna, I
3 believe it was your testimony that she
4 said, "Go ahead, do whatever you have
5 to"?

6 A. To catch the individual, that is correct.

7 Q. Let me ask you, in order to be fair, let me
8 ask you the same question about Donna
9 that I did about Detective Monroe. Can
10 you try to give me as close as you can to
11 her exact words and in response to
12 Detective Monroe?

13 A. Her response to the best of my recollection
14 was, "Do whatever you have to do to catch
15 the individual," or suspect or whatever,
16 how she described the individual,
17 perpetrator.

18 Q. In your presence, was Donna Roberts ever told
19 that her consent was needed for the
20 police to process the residence at 254
21 Fonderlac?

22 A. In my presence, no.

1 Q. In your presence was Donna Roberts ever told
2 she had a right to refuse consent?

3 A. Not to my knowledge, not in my presence.

4 MR. INGRAM: No further questions.

5 MR. BECKER: Nothing further.

6 THE COURT: Thank you. You may step
7 down.

8 CAPT. KARL COMPTON

9 being duly sworn according to law, on his oath,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. BECKER:

12 Q. State your name for the record.

13 A. Karl Compton.

14 Q. And you are a Captain with the Howland Police
15 Department?

16 A. Yes.

17 Q. How long have you been there?

18 A. Coming on 32 years.

19 Q. Going to retire?

20 A. Yes.

21 Q. Captain Compton, I want to direct your
22 attention to December 12, 2001, around

1 10:00 in the morning, probably before
2 10:00, did you and Detective Paul Monroe
3 go to a residence in Austintown, here in
4 Ohio?

5 A. Yes.

6 Q. Do you know whose residence that was that you
7 went to?

8 A. I believe it was the Roberts family.

9 Q. Do you know what your purpose was in going to
10 that residence on December 12, 2001?

11 A. Yes.

12 Q. What was it?

13 A. To have Donna Roberts sign a consent to search
14 form.

15 Q. And were you present -- well, describe what
16 happened when you got to that Austintown
17 residence address.

18 A. We were invited in, sat in the living room
19 with Donna Roberts. Detective Monroe
20 read her the form, explained any
21 questions she had and then she signed it.

22 Q. Did she have -- or what was her emotional

1 state as it appeared to you?

2 A. A little bit tired, but she was okay. She was
3 not out of control or anything.

4 Q. Do you know how the form was presented to her?
5 Was it read to her or a copy to read or
6 both?

7 A. She was read the form by Detective Monroe, and
8 it was handed to her. I don't know if
9 she read it herself then or not.

10 Q. And did she indicate at any point that she did
11 not want to consent to a search of her
12 residence?

13 A. No.

14 Q. And she freely and voluntarily signed the
15 form?

16 A. Yes.

17 Q. Did she appear to be under the influence of
18 drugs or alcohol?

19 A. No.

20 Q. You have dealt with people who have been under
21 the influence of drugs or alcohol?

22 A. Yes.

1 Q. Did she appear to you to be unstable in any
2 manner?

3 A. No.

4 Q. I'm going to hand you a two page document that
5 has been marked for identification as
6 State's Exhibit No. 1. Do you recognize
7 State's Exhibit No. 1?

8 A. Yes.

9 Q. How do you recognize State's Exhibit No. 1?

10 A. It is a copy of our consent to search form.
11 It has got my signature as a witness on
12 the bottom.

13 Q. Is that a fair and accurate copy of the
14 consent to search form?

15 A. Yes.

16 Q. Is there a portion on that form that advises
17 the Defendant that she has a right to
18 refuse consent?

19 A. Yes.

20 Q. And did Miss Roberts, was that read to Miss
21 Roberts?

22 A. Yes.

1 Q. And she signed that document?

2 A. Yes.

3 Q. In your presence?

4 A. Yes.

5 Q. For the record, do you see the individual who
6 signed State's Exhibit No. 1 on December
7 12, 2001?

8 A. Yes.

9 Q. Is she here?

10 A. She's wearing the blue jump suit, seated next
11 to Mr. Ingram.

12 MR. BECKER: Allow the record to
13 reflect that the witness has identified Donna
14 Roberts, the Defendant in this case.

15 THE COURT: The record will reflect
16 that.

17 MR. BECKER: Thank you.

18

19 CROSS EXAMINATION BY MR. INGRAM:

20 Q. Hi, Captain. How are you?

21 A. Good.

22 Q. 32 years?

1 A. Yes.

2 Q. Congratulations. It is a long time. You
3 accompanied Detective Monroe to the
4 residence of Ralph and Rita Roberts?

5 A. Yes.

6 Q. To see Donna?

7 A. Yes.

8 Q. And the purpose of traveling to the Roberts'
9 residence in Austintown, Ohio was to get
10 Donna Roberts to sign a consent to search
11 form?

12 A. Yes.

13 Q. The purpose in traveling to Austintown, Ohio
14 was not to question Donna Roberts?

15 A. Yes.

16 Q. All you two were after was a signed consent to
17 search form?

18 A. Yes.

19 Q. And the consent to search form which I believe
20 is in front of you, marked State's
21 Exhibit No. 1, was executed at
22 approximately 10:25 A.M.?

1 A. I believe we put on the time here somewhere.

2 Q. I believe the time is on the bottom of the
3 second page?

4 A. 10:25 A.M.

5 Q. Do you, Sir, know whether evidence had already
6 been removed from 254 Fonderlac at the
7 time that consent to search form was
8 executed?

9 A. I believe there was, yes.

10 Q. I'm going to hand you what has been marked for
11 identification purposes as Defendant's
12 Exhibit A. I'll ask you to review it and
13 tell me what it is, please?

14 A. It is a property receipt form that we use at
15 the Howland Police Department.

16 Q. Itemizing items removed from Fonderlac Drive?

17 A. Yes.

18 Q. And items number one through -- what would the
19 final number be? It is eight pages long,
20 correct?

21 A. Yes, eight pages. Item 53 would be the last
22 one.

1 Q. And do you know whether every one of those 53
2 items was removed from the Fonderlac
3 Drive residence before State's Exhibit
4 No. 1 was signed at 10:25 in the morning?

5 A. I have no knowledge of that, as to when any of
6 these 53 items were taken, before or
7 after.

8 Q. You do know, however, that some items were
9 taken before, correct?

10 A. I believe they were. The crime scene unit was
11 just finishing up to leave when I got
12 there. That was closer to 6:00 in the
13 morning.

14 Q. You arrived at the Fonderlac residence at 6:00
15 A.M.?

16 A. Around 5:00 or 6:00 in the morning.

17 Q. When were you notified of the call?

18 A. Just prior to that.

19 Q. When you arrived at the residence, was
20 Detective Monroe there?

21 A. Yes.

22 Q. Was Detective Dillon there?

1 A. Yes.

2 Q. Was -- were there representatives of the
3 Trumbull County Sheriff's Department
4 there?

5 A. Tony Leshnack was there from the Sheriff's
6 Department.

7 Q. Was there anyone there from the Coroner's
8 office at the time you arrived?

9 A. No.

10 Q. Were there any other police officers there?

11 A. Some of our midnight shift, but I couldn't
12 name them right now as to who all was
13 there of the uniformed midnight shift.

14 Q. You have identified three police officers.
15 Can you estimate the total number of
16 police officers that were there when you
17 arrived?

18 A. At least four, I know there was one uniform
19 there.

20 Q. Was the uniformed officer stationed outside?

21 A. I don't remember that.

22 Q. When you arrived at the scene, do you know

1 where Donna Roberts' automobile was
2 located?

3 A. No, I don't.

4 MR. INGRAM: No further questions.

5 MR. BECKER: Nothing further of this
6 witness.

7 THE COURT: You may step down.

8 DET. SGT. FRANK DILLON

9 being duly sworn according to law, on his oath,
10 testified as follows:

11 DIRECT EXAMINATION BY MR. BECKER:

12 Q. State your name for the record.

13 A. Sergeant Frank Dillon.

14 Q. Where do you work at?

15 A. Howland Township Police Department.

16 Q. How long have you been with the Howland Police
17 Deposition?

18 A. 15 years.

19 Q. Detective Dillon, I want to direct your
20 attention to December 12, 2001, sometime
21 after midnight, were you contacted at
22 your residence by Officer Albert Ray to

1 respond to 254 Fonderlac Drive?

2 A. Yes, Sir, I was.

3 Q. Do you know what that was in reference to?

4 A. They said they had a male subject down there
5 which they anticipated may have expired
6 already.

7 Q. And did you in fact go to that residence?

8 A. Yes, Sir, I did.

9 Q. When you got to that residence, can you
10 describe the scene and who was there?

11 A. It was a ranch home. Present in the house
12 were Patrolman Ray, Patrolman Pollcino,
13 the victim's wife Donna Roberts, and the
14 victim.

15 Q. How did Donna Roberts appear to be to you?

16 A. She was hysterical. Upset.

17 Q. And did you have a chance then to finally
18 speak to Donna Roberts?

19 A. Yes, Sir, I did.

20 Q. What did she tell you about the evening
21 leading up to her finding Mr. Fingerhut?

22 A. She told me that she had talked to her husband

1 or to Mr. Roberts on the phone a couple
2 of times throughout the evening.

3 Q. You mean Mr. Fingerhut?

4 A. Mr. Fingerhut. I'm sorry. Throughout the
5 evening and that eventually during the
6 last phone call, I believe, he told her
7 to go ahead and go out shopping, since
8 she liked shopping because he might be
9 home a little late.

10 Q. Were you able to ascertain where he worked at?

11 A. At the Greyhound bus terminal in Youngstown.

12 Q. So Miss Roberts then proceeded to tell you
13 that she came home I assume, after she
14 went shopping?

15 A. Yes, Sir.

16 Q. What did she tell you about the residence that
17 she felt was unusual when she came home?

18 A. She explained how she came down the street.
19 She pushed the button to open the
20 overhead garage door and as she began to
21 pull into the driveway, she noticed that
22 it was going down and the light had

1 already been on.

2 Q. Indicating what?

3 A. That she thought that the garage door was open
4 when she pushed the button to make it go
5 up. It was already up.

6 Q. And did she say that was unusual for her and
7 her husband to leave that garage door
8 open?

9 A. Yes. She said they close it all the time.

10 Q. Did she describe to you whether Mr.
11 Fingerhut's car was home when she
12 returned from shopping?

13 A. She said that it was not.

14 Q. And was that unusual in her opinion?

15 A. I believe she anticipated he had been home by
16 then.

17 Q. When she got home, did she tell you what she
18 did?

19 A. She told me she got out of her car and when
20 she went to go into the house through the
21 garage door which leads into the kitchen,
22 she saw her husband's lying on the floor.

1 Q. And did Donna Roberts, while she's telling you
2 this story, was she very lucid or was she
3 in a state of distress?

4 A. She would shout out, "Oh, my Robert. Oh, my
5 God, Robert, what's happened," and I
6 would calm her down. Then we would talk
7 a little bit more and then she would
8 become emotional again.

9 Q. And she portrayed to you that she was nothing
10 more than a now widowed woman whose
11 husband had been criminally murdered?

12 A. Yes, Sir. She was a victim.

13 Q. And you had no reason to suspect otherwise,
14 did you?

15 A. No, Sir.

16 Q. Now, did she describe for you that, or did she
17 tell you that she had contacted anyone
18 when she had found Mr. Fingerhut, her
19 husband deceased, in the man door from
20 the garage to the home?

21 A. Yes, Sir. She said when she saw Robert that
22 she freaked out and ran by his body and

1 got a portable telephone and called 911.

2 Q. And you knew that basically because you were
3 dispatched by the other officers who
4 confirmed that?

5 A. Yes, Sir.

6 Q. Eventually then, other detectives were
7 contacted to return to the residence --
8 or I'm sorry, to come to the residence,
9 that would include Detective Monroe?

10 A. Yes, Sir.

11 Q. Were you there before or after Detective
12 Monroe?

13 A. I was there probably five minutes before him.

14 Q. And while speaking to Miss Roberts again,
15 could you hear her when you were in other
16 parts of the house?

17 A. During the course of the time that we were
18 there, yes, we could hear. She was in
19 the master bedroom and we could hear
20 crying out and sobbing.

21 Q. Could you hear anything that she was saying?

22 A. I believe she just repeated things like, "Oh,

1 my God. My Robert. I can't believe he's
2 there. I can't believe he's dead."

3 Things in that nature or of that nature.

4 Q. And when you had a chance to -- well, strike
5 that. Did there become a need to try and
6 contact family members of Donna Roberts?

7 A. Yes, Sir.

8 Q. Explain how that came about.

9 A. Well, at one point, we realized that we
10 should, she needed somebody to console
11 her. We didn't know if she had local
12 family members or not, so we talked to
13 her about that and she indicated she had
14 a brother in Austintown.

15 Q. What was done to contact the brother in
16 Austintown?

17 A. I believe our dispatch tried to call the
18 residence and got an answering machine,
19 so they sent the Austintown Police
20 Department to the house to make personal
21 contact with her brother.

22 Q. And in fact, did her brother arrive at the

1 residence in the early morning hours of
2 December 12th?

3 A. Yes, Sir.

4 Q. And at some point, was Donna Roberts taken
5 from that house by Ralph Roberts, her
6 brother?

7 A. Yes, Sir.

8 Q. Prior to either his arrival or her leaving,
9 did Detective Monroe explain to Donna
10 what was going on at her house and what
11 Detective Monroe would need and the
12 Howland police would need to do?

13 A. Yes, Sir.

14 Q. And as best as you can recall, what did
15 Detective Monroe tell Miss Roberts?

16 A. He explained to her that he would have to go
17 through the entire house, that it was a
18 crime scene and everything in it to
19 search for evidence to try and determine
20 who may have committed the crime upon
21 her -- upon Mr. Fingerhut.

22 Q. And Donna Roberts was in no way arrested for

1 this crime that night, was she?

2 A. No, Sir, she was not.

3 Q. She was not -- she was not indicating that she
4 was a suspect in this crime, was she?

5 A. No, Sir, she did not. She was a victim in my
6 eyes.

7 Q. Do you recall what Donna Roberts' statement
8 was to Detective Monroe when he advised
9 her that they needed to treat this as a
10 crime scene and look for evidence?

11 A. She was adamant through most of the night that
12 she wanted us to get the people who did
13 this, whoever did this to Robert. And I
14 believe at that time she made a statement
15 saying, "I don't care, you do what you
16 have to do. I want you to get the person
17 who did this to my Robert."

18 Q. And you said she was adamant about that?

19 A. Absolutely.

20 Q. And do you recall if she said it more than
21 once?

22 A. I remember hearing it at least once, if not

1 more. Her attitude was that she wanted
2 to cooperate with us and do whatever she
3 could do.

4 MR. INGRAM: This is a speech, it is
5 not responsive to a question that has been put to
6 the witness.

7 THE COURT: It is overly responsive.
8 Rephrase your question. Sustained.

9 Q. Describe her in general on the early morning
10 hours of December 12th and how she
11 portrayed herself and how she treated the
12 Howland Police Department.

13 A. She treated us with respect and appeared to be
14 a grieving widow.

15 Q. And from her actions and statements, can you
16 describe for this Court what she wanted
17 the Howland Police Department to do about
18 Mr. Fingerhut's death?

19 A. She wanted us to find out who was responsible
20 for it.

21 Q. And she permitted you to go through her
22 residence?

1 A. Yes.

2 Q. You were there for a number of hours you
3 assume with Miss Roberts, maybe two
4 hours?

5 A. I believe so.

6 Q. At any point during the time you were in the
7 Fonderlac residence, did Mrs. Roberts
8 indicate to you that she wanted the
9 Howland Police Department to leave?

10 A. No, Sir.

11 Q. At any point during that time, did she
12 indicate to you that she did not want you
13 looking in any area of her home?

14 A. No, Sir.

15 Q. Did she indicate that she didn't want you to
16 do anything?

17 A. No, Sir.

18 Q. When she left the residence with Ralph
19 Roberts, did she give you any indication
20 that she wanted you to leave at that
21 time?

22 A. No, Sir.

1 Q. When she left with Ralph Roberts, did she
2 indicate that you were not to search in
3 her residence anywhere?

4 A. No, Sir.

5 Q. The individual who you spoke to and who you
6 referred to as Donna Roberts, is she here
7 in the Courtroom?

8 MR. INGRAM: Stipulation
9 identification of Donna Roberts for purposes of
10 this hearing.

11 THE COURT: Okay.

12 MR. BECKER: I have nothing further.

13 CROSS EXAMINATION BY MR. INGRAM:

14 Q. Good afternoon, Sergeant Dillon. How are you,
15 Sir?

16 A. Good, thank you, Sir.

17 Q. You arrive at 254 Fonderlac about five minutes
18 before Detective Monroe?

19 A. I believe so.

20 Q. And when you arrive at the residence, you
21 confer with Officer Ray and Officer
22 Pollcino?

1 A. Yes, Sir.

2 Q. And they told you that when they had arrived,
3 they were met in the front yard by a
4 hysterical Donna Roberts?

5 A. Yes, Sir.

6 Q. And they also told you, did they not, that
7 they had conducted a protective sweep of
8 the interior and exterior of the
9 residence?

10 A. Yes, Sir.

11 Q. Were emergency medical personnel present at
12 the Fonderlac residence when you arrived?

13 A. Yes, Sir.

14 Q. Were any of those emergency medical personnel
15 attending to Donna Roberts while you were
16 in that house at all?

17 A. I don't recall.

18 Q. After talking with Officers Ray and Pollcino,
19 what do you then do?

20 A. Talked to Mrs. Roberts.

21 Q. And your purpose in talking with Mrs. Roberts
22 was to gain information?

1 A. Yes, Sir.

2 Q. Is it fair to say that because of her
3 emotional state, you were having a
4 difficult time getting information from
5 her?

6 A. Not really, Sir. I was being patient and
7 giving her time to grieve and as she
8 would calm down, then we would continue
9 our conversation.

10 Q. Shortly into your conversation, let me back
11 up. Before you started to talk with her,
12 did you have to ask her to try to calm
13 herself down, so that she could engage
14 you in discussion?

15 A. Yes, Sir, I believe so.

16 Q. And did it take some time for her to calm
17 herself down to the point where she was
18 able to engage you in discussion?

19 A. A few minutes. She was on again and off
20 again.

21 Q. And after she calms herself down, you and she
22 have a conversation?

1 A. Yes, Sir.

2 Q. And shortly into that conversation, she breaks
3 down and says, "I can't take this any
4 more. Look, I see Robert lying there on
5 the floor with all of that blood"?

6 A. Yes, Sir.

7 Q. And at that time, you have to ask her to calm
8 herself down again?

9 A. Yes, Sir.

10 Q. So you stopped the interview process and said,
11 "Donna, please try to calm yourself down,
12 I need to talk with you"?

13 A. Yes, Sir.

14 Q. And you ask her to calm herself down because
15 she's having a difficult time answering
16 what you are asking her?

17 A. I believe she had a difficult time coming back
18 to the fact that we had to have a
19 discussion.

20 Q. After you get Donna to calm down the first
21 time -- well, you get her to calm down
22 once. She begins a conversation, then

1 you get her to calm down a second time.

2 She continues the conversation, then she

3 breaks down yet again, does she not?

4 A. I believe so.

5 Q. And you get her to calm down the third time?

6 A. Yes, Sir.

7 Q. And does that take her some time to calm
8 herself down?

9 A. It is not a long period of time, it is a
10 matter of a few minutes. As I said,
11 she's in and out.

12 Q. Have you seen anyone in shock? Have you dealt
13 with anyone in shock?

14 A. I believe so.

15 Q. Do you know if, use your own words, going in
16 and out would be a symptom of shock?

17 A. I don't believe she was that -- that she was
18 in shock at the time I was talking to
19 her. No, I believe it was more emotional
20 than anything else.

21 Q. She was emotional?

22 A. Yes.

1 Q. She was distraught?

2 A. To a certain degree, yes, there was crying.

3 Q. Was she crying the entire time?

4 A. No, Sir.

5 Q. Off and on?

6 A. Yes, Sir.

7 Q. Do you recall whose idea it was to call Ralph
8 Roberts?

9 A. No, Sir.

10 Q. But Ralph Roberts was called so that he could
11 come to the Fonderlac residence and
12 provide some support to Donna?

13 A. Yes, Sir.

14 Q. To console her was the term you used for
15 Mr. Becker?

16 A. Yes, Sir.

17 Q. Did I ask you if you saw emergency personnel
18 and medical personnel attending to Donna
19 at all?

20 A. Yes, Sir, you did, but I answered that
21 question.

22 Q. And you do not recall seeing that, correct?

1 A. No, Sir.

2 Q. At some point in time, Ralph Roberts, Rita

3 Roberts and Donna Roberts are leaving the
4 residence?

5 A. Yes, Sir.

6 Q. And at that point, you overhear a conversation
7 between Detective Monroe and Donna
8 Roberts?

9 A. Yes, Sir.

10 Q. Are you party to any conversation between
11 Detective Monroe and Donna Roberts before
12 Ralph, Rita and Donna are actually
13 leaving the residence?

14 A. I don't recall. I believe I was outside
15 walking the exterior of the house or I
16 was inside taking pictures.

17 Q. You had other things to do?

18 A. Yes, Sir.

19 Q. The only conversation between Detective Monroe
20 and Donna Roberts that you recollect is
21 in the hallway off of the living room as
22 the three Roberts are leaving the

1 residence?

2 A. Yes, Sir. They are stopped in the hallway
3 having the discussion.

4 Q. And it is during that discussion that you
5 heard Detective Monroe say to Donna
6 Roberts, that we, meaning the Howland
7 Police Department, would have to go
8 through the entire house, that it was a
9 crime scene?

10	A. Yes, Sir.
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11 Q. That is a statement of fact, is it not?

12 | A. Yes, Sir.

13 Q. And Donna's response was what?

14 A. I believe, "Do whatever you have to do. I
15 want you to get the person who did this
16 to my Robert." She said that more than
17 once. "I want you to get this person
18 that did this to my Robert." Not
19 particularly at that time.

20 Q. But in response to Detective Monroe's
21 statement of fact that this is a crime
22 scene and we have to process the crime

1 scene, Donna states, "Do whatever you
2 have to do, just find this person"?

3 A. Yes, Sir.

4 Q. Was Donna ever told in your presence that her
5 consent was needed for the Howland Police
6 Department to process 254 Fonderlac?

7 A. No, Sir.

8 Q. Was Donna Roberts ever told in your presence
9 that she could refuse consent to the
10 processing of 254 Fonderlac?

11 A. No, Sir.

12 Q. Was her car in the garage when you arrived?

13 A. Yes, Sir.

14 Q. What time did you leave the scene, the Roberts
15 home, about 6:00 in the morning?

16 A. Yes, Sir, somewhere around there.

17 Q. I believe you cleared the scene at 6:27 A.M.,
18 that is approximately right?

19 A. Yes, Sir. 6:27.

20 Q. At the time you leave, is anyone moved to
21 Donna Roberts' motor vehicle from the
22 garage into the driveway or moved it at

1 all?

2 A. I believe it was pulled out of the garage at
3 one point.

4 Q. Who did that, do you know?

5 A. I believe a towing service did.

6 Q. I'm going to hand you, but not mark, a copy of
7 your supplemental report. And first of
8 all, you can look at it and satisfy
9 yourself that it is your report, and then
10 I would direct your attention to page
11 five.

12 A. Yes, Sir.

13 Q. Does that refresh your recollection at all
14 about anything about the moving of the
15 car?

16 A. Yes, Sir.

17 Q. Was the car moved by a police officer?

18 A. I don't recall.

19 Q. Do you recall if the keys to the car were in
20 the motor vehicle?

21 A. I don't recall that, either.

22 Q. Do you recall if the keys of the car were in

1 the residence?

2 A. I don't recall. I didn't deal too much with
3 the car.

4 Q. Would you take a -- I'll take that from you.
5 Would you take a gander at Defendant's
6 Exhibit A, please. What is Defendant's
7 Exhibit A?

8 A. It's a property receipt.

9 Q. For items removed from 254 Fonderlac on
10 December 12, 12001?

11 A. Yes, Sir.

12 Q. Eight pages long, items one through 53?

13 A. Yes, Sir.

14 Q. Were all of those items removed from 254
15 Fonderlac by the time you cleared the
16 scene at 6:27?

17 A. I would believe so.

18 MR. CONSOLDANE: I have no further
19 questions.

20 MR. BECKER: I have nothing further.

21 THE COURT: You are excused. Thank
22 you.

1 MR. BECKER: Can we take a short
2 recess?

3 THE COURT: Let's take a ten minute
4 break.

5 (Court in recess at 2:20 p.m.)

6 (Resumed in Open Court at 2:50 p.m.)

7 DET. SGT. PAUL MONROE

8 being duly sworn according to law, on his oath,
9 testified as follows:

10 DIRECT EXAMINATION BY MR. BECKER:

11 Q. You are Detective Sergeant Paul Monroe?

12 A. Yes, Sir.

13 Q. You work with the Howland Township Police
14 Department?

15 A. Yes, I do.

16 Q. You have been there approximately 17 years?

17 A. Yes.

18 Q. I want to direct your attention to December
19 12, 2001, sometime after midnight; were
20 you called in reference to a case that
21 had occurred at 254 Fonderlac Drive?

22 A. Yes, Sir, I was.

1 Q. When you were called at your residence, did
2 you know at the time what the call was
3 for?

4 A. The only information I had at the time was
5 there was a shooting, that there was a
6 white male subject that was shot and
7 deceased with a bullet wound to the head.
8 He was bleeding from the head, assumed it
9 was a bullet wound and a firearm laying
10 near the victim. That's the only
11 information I believe I had.

12 Q. When you eventually got to the scene at 254
13 Fonderlac, can you describe for this
14 Court what you observed?

15 A. When I arrived at the scene there were police
16 cars out in the street. Walked up into
17 the residence, spoke with Officer Ray.
18 Gave me a brief run down as far as
19 information he knew as to where the
20 victim was, what they had done, who had
21 been contacted, that they contacted the
22 Coroner's office and they were going to

1 send someone to our location there on
2 Fonderlac, that the victim's wife was at
3 the residence, that she was in the rear
4 bedroom.

5 Q. When you got to the residence on December 12,
6 2001 and spoke to Officer Ray, were you
7 able to determine how the Howland police
8 were contacted to this location?

9 A. Yes.

10 Q. And how were they contacted to go to 254
11 Fonderlac?

12 A. The Howland police were contacted by the
13 Trumbull County 911 center after they
14 received a 911 call from Donna Roberts.

15 Q. Now, after you spoke to Patrolman Ray, did you
16 actually see Donna Roberts in the
17 residence?

18 A. Yes, I did.

19 Q. Can you describe how she appeared when you
20 first observed her?

21 A. She was in the master bedroom and she was
22 screaming, "My Robert, my Robert."

1 Appeared to be emotional.

2 Q. Did she tell you that she had done anything
3 that night to Mr. Fingerhut?

4 A. No, she did not.

5 Q. Now what did you do initially after you spoke
6 to Patrolman Ray?

7 A. There were still some firemen at the
8 residence. Knew that they had a crime
9 scene. I spoke with Captain Phillips of
10 the Howland Fire Department, told him
11 that we weren't going to need the
12 services of the fire department and I
13 asked them to clear all of the medics
14 that were there out.

15 Q. And that was done?

16 A. Yes, Sir, it was.

17 Q. Then you and the other officers there, what
18 did you do in terms of investigating this
19 scene?

20 A. I felt that we needed a little more
21 assistance. I contacted Detective
22 Leshnack of the Trumbull County Sheriff's

1 department. Asked him if he could come
2 out and assist. He's part of the
3 Trumbull County homicide squad, assist
4 with the crime scene. I also contacted
5 Detective Daniel Mason of the Warren City
6 Police Department and requested his
7 assistance.

8 Q. And they did come to the house?

9 A. Yes, they did.

10 Q. What was the purpose in them coming to the
11 residence?

12 A. To assist in photography and collection of
13 evidence.

14 Q. Now when you were going through this house,
15 did you have a chance to speak to Miss
16 Roberts about what had actually happened
17 to Mr. Fingerhut?

18 A. Yes.

19 Q. And what did you tell Miss Roberts had
20 happened to Robert Fingerhut?

21 A. I told Donna Roberts that it appeared that her
22 husband had been shot to death and we

1 needed to explore or investigate as to
2 what happened. Donna then began
3 screaming, "Someone shot my Robert." Got
4 very emotional again. Told her that I
5 needed her to try to be strong and calm
6 down and answer a few questions for me to
7 tell me what her whereabouts for the day
8 were.

9 Q. Did she do that?

10 A. Yes, she did.

11 Q. Did she indicate that it was -- well, tell me
12 about when she came home from where she
13 went. We already heard testimony that
14 she went shopping. Can you tell us what
15 she described for you when she returned
16 from her shopping earlier that evening,
17 which I guess would have been December
18 11th actually?

19 A. Donna Roberts told me that as she came down
20 Fonderlac, she often plays this game
21 where she pushes the garage remote to see
22 how far from the house you can get the

1 garage door to open and after she pushed
2 the garage door opener button, she
3 realized the garage door was going down
4 and not up. Pushed it again and it was
5 going up. She parked her vehicle to the
6 right side of the garage, exited the
7 vehicle, and as she went to walk in the
8 garage man door, there's an opening into
9 the garage from the house, realized that
10 the door was standing open, and saw her
11 husband -- or I'm sorry, Robert Fingerhut
12 laying in a pool of blood.

13 Q. And did she indicate that something was
14 missing from the residence?

15 A. She indicated that her husband's Chrysler,
16 silver Chrysler 300-M was missing.

17 Q. Which she indicated was obviously -- she
18 indicated it had been stolen?

19 A. She told me it was stolen.

20 Q. I think at some point, she told you, "Where's
21 Robert's car? Someone stole his car".

22 A. Right. We asked questions about it. She said

1 that she had answered all of these
2 questions, she already told the other
3 officer all of the questions that I was
4 asking. She said she already answered
5 all of these questions. I told her I
6 needed her to go over it again with me.
7 She said that she kept asking, "Where's
8 my Robert's car. Somebody stole it."
9 She also indicated, we asked her about
10 firearms, what kind of firearms were in
11 the house, and she told me that they had
12 several small hand guns, that typically
13 there was one in the night stand next to
14 the bed. It wasn't there. She said that
15 Robert Fingerhut kept it in his car,
16 which was the missing silver Chrysler.

17 Q. So, were you able to determine that a firearm
18 and a motor vehicle were missing from the
19 residence?

20 A. Yes.

21 Q. I guess technically the vehicle was missing
22 and inside that vehicle, Miss Roberts

1 indicated to you that a firearm was
2 normally kept in that car?

3 A. She said she wasn't sure that the firearm was
4 either in the night stand or the vehicle
5 and she didn't know what the case was,
6 whether it was in the car or in the night
7 stand, but it was missing.

8 Q. But it was not in the night stand pursuant to
9 your discussions with her and your
10 investigation that night?

11 A. No, Sir.

12 Q. Now, Miss Roberts went on to tell you that
13 upon coming home and observing Robert
14 Fingerhut, did she tell you who she had
15 called?

16 A. Say that again.

17 Q. When she was telling you the story about
18 coming home with the garage door and
19 pulling into the garage, she observed
20 Robert Fingerhut on the floor, did she
21 tell you if she called anyone?

22 A. She told me that she went in the house,

1 grabbed the portable phone and then ran
2 out the front door and called the
3 Trumbull County 911 or she told me she
4 dialed 911 and talked to the dispatchers.

5 Q. Did she tell you why she went outside to make
6 the call? Was she in fear that there was
7 an intruder?

8 A. Yes.

9 Q. So, she was portraying to you that her house
10 had been burglarized or someone had
11 entered the home and that her husband had
12 been killed by someone else?

13 A. Yes.

14 Q. And throughout these early morning hours of
15 December 12th, did she give you any other
16 indication that anyone other than -- or
17 I'm sorry, strike that. On December 12,
18 2001, did she say that anyone other than
19 herself had been involved in this crime?

20 A. No.

21 Q. In fact, she never implicated herself?

22 A. No, Sir.

1 Q. She portrayed herself as, what would you
2 describe her portrayal of herself?

3 A. As the victim.

4 Q. And throughout the early morning hours, I
5 guess, she made statements to you about
6 what your role was to be in her eyes, is
7 that correct?

8 A. Yes, Sir.

9 Q. And what were her statements that your role
10 was supposed to be?

11 A. My role was to investigate the crime and find
12 out whoever was responsible for this and
13 arrest them.

14 Q. And did she say that more than once?

15 A. Yes, she did.

16 Q. Do you recall how many times she may have said
17 it?

18 A. I'm certain she said it at least three times,
19 if not more.

20 Q. Eventually, and what was her emotional state
21 during this time as at least she
22 portrayed it to you?

1 A. She was to me, she appeared to be the grieving
2 spouse of the victim. She told me that
3 it was her husband that had been murdered
4 and appeared to be grieving over her
5 loss.

6 Q. Now, did she tell you -- or I'm sorry, did you
7 make a decision at some point or the
8 other officers make a decision that
9 someone should be there to console her?

10 A. Yes.

11 Q. Who made that decision and what was done?

12 A. I made the decision. There were times where
13 we were trying to discuss certain
14 findings at the scene that we couldn't
15 talk in a loud manner or just a normal
16 conversation with respect to Donna
17 Roberts being in another room, the door
18 standing open. She could hear our
19 conversations. We could hear her
20 bellowing and screaming and crying from
21 the back room and at times we knew that
22 she was listening to our conversations.

1 MR. INGRAM: Objection.

2 THE COURT: What is your objection?

3 MR. BECKER: I'll stipulate to that.

4 Let me move on.

5 Q. Did in fact Ralph -- or I'm sorry, did some
6 relatives of Donna Roberts actually
7 arrive at the residence?

8 A. Yes.

9 Q. And who were those relatives, if you know?

10 A. Ralph Roberts and Rita Roberts.

11 Q. Do you know what their relationship was to
12 Donna?

13 A. Ralph Roberts is Donna Roberts' blood brother
14 and Rita Roberts is her sister-in-law.

15 Q. And do you know how they were advised to come
16 to the Fonderlac residence?

17 A. We had attempted to have the 911 center make
18 calls to the residence, and have them
19 come to our location without any luck.
20 The Trumbull County 911 center contacted
21 the Austintown Police Department and had
22 them send a cruiser to Mr. Roberts'

1 house.

2 Q. And the Austintown police then notified him to
3 come to the Fonderlac residence?

4 A. Yes.

5 Q. And in fact, Rita and Ralph Roberts did come
6 to that residence?

7 A. Yes.

8 Q. How long after you got to the scene, do you
9 believe they came to that residence?

10 A. Approximately an hour and a half later.

11 Q. And did they speak to Donna Roberts?

12 A. Yes, they did.

13 Q. At some point, was there a decision by someone
14 that Donna Roberts should go back with
15 Ralph and Rita Roberts to their
16 residence?

17 A. Yes.

18 Q. And how was that decision made or who was it
19 made by?

20 A. Donna Roberts.

21 Q. And she agreed to go back to Ralph and Rita's
22 residence?

1 A. Yes, that was her decision.

2 Q. Prior to and I want to maybe try and narrow
3 this down, either prior to the Ralph and
4 Rita Roberts arrival or after their
5 arrival, did you have the discussion with
6 Donna about searching the house and
7 looking for further evidence?

8 A. Yes, I did.

9 Q. When did that conversation happen or was there
10 more than one conversation?

11 A. There was more than one conversation.

12 Q. Did the first conversation occur before or
13 after Ralph and Rita arrived, if you
14 know?

15 A. It was before Ralph and Rita arrived.

16 Q. And what was your discussion with Donna
17 Roberts about looking into her home?

18 A. As I was telling you earlier, because of some
19 of the things we were talking about, at
20 certain points Donna Roberts would become
21 very emotional and screaming and crying
22 and we felt that it might be better if

1 she went or at least had somebody -- she
2 said she didn't really know any of the
3 neighbors, had somebody come to the house
4 and at least sit with her. And I
5 explained to her that we don't know
6 anything other than your husband has been
7 shot. I didn't tell her how many times
8 he had been shot. We don't know where or
9 why there had been an intrusion into her
10 home or why the shooting occurred. I
11 asked her if she knew of anything that
12 was missing. I had walked through the
13 house already looking for signs that the
14 electronic equipment -- things that are
15 commonly stolen during burglaries, might
16 be missing. Just basically gathered
17 information of where valuables might be.
18 She opened a drawer and pulled out a
19 stack of two dollar bills. We couldn't
20 determine anything other than the vehicle
21 and the gun was missing, told her that we
22 needed to process the entire house as a

1 crime scene to determine where else a
2 suspect may have gone in the house and
3 what else he may have done. She told me
4 that do whatever you have to do, search
5 the whole place, just find the guy.

6 Q. And you took that as what from Donna Roberts,
7 to do your duty as to why the police were
8 called there?

9 A. That she wanted me to fully investigate this
10 crime, to search the entire residence and
11 basically gave me cart blanche to look
12 anywhere on their property while I was
13 there, to find clues as to who had
14 committed this act.

15 Q. And did she ever that morning, give you any
16 indication that she didn't want you to
17 search either the house or any portion of
18 the house?

19 A. No, she did not.

20 Q. Did she ever give you any indication that she
21 didn't want you to search any portion of
22 the outside property or the garage?

1 A. No, she did not.

2 Q. Did she give you any indication that she did
3 not want you to search the motor vehicle?

4 A. No, she did not.

5 Q. And in fact, she was very cooperative with
6 you?

7 A. She told me she wanted me to search the whole
8 place and find out who had done this to
9 her Robert.

10 Q. And that is what you did?

11 A. Yes, Sir.

12 Q. Now, there was another time, I guess, when
13 Ralph and Rita Roberts did arrive and you
14 indicated there were at least three
15 occasions where she said, "Find this
16 person and find out who did this"?

17 A. Yes.

18 Q. There was at least one time that occurred
19 before Ralph and Rita Roberts arrived?

20 A. Yes.

21 Q. Did the second one occur either before they
22 arrived or after they arrived?

1 A. Before.

2 Q. So twice at least before the Roberts, Ralph
3 and Rita, that is arrived, Donna
4 indicated to you that you were to search
5 her entire residence and the property?

6 MR. INGRAM: I object to the form of
7 the question.

8 MR. BECKER: I'll strike that.

9 THE COURT: Sustained.

10 Q. She indicated that she wanted you to find the
11 killer?

12 A. Yes.

13 Q. And to do whatever it took for you to find
14 them?

15 A. Yes.

16 Q. There came a third time, at least, where she
17 indicated that she wanted you to do this,
18 correct?

19 A. Yes.

20 Q. And explain that situation.

21 A. When Ralph and Rita Roberts arrived at the
22 home, at 254 Fonderlac, I briefly spoke

1 with Ralph Roberts, told him that Robert
2 Fingerhut was, had been shot and killed.
3 He asked me if he was still in the house.
4 I told him he had been shot in the
5 kitchen. He asked if he was still in the
6 house, and I said that he was and that it
7 was a pretty graphic scene, and that it
8 would probably be best if Donna left the
9 residence, at least for the remainder of
10 the night. I didn't want to expose her
11 to the mess that was there. She had
12 already seen it once. He went in the
13 bedroom and spoke with Donna. There was
14 more crying and they embraced with each
15 other, hugged each other and had
16 conversation with them. Then again I
17 talked with Donna and told her, Ralph
18 Roberts was standing there, I don't know
19 if Rita Roberts was standing there or
20 not, that we were going to probably be
21 all night processing the crime scene, and
22 that we needed to process the entire

1 house as a crime scene, and explained to
2 them again that we needed to go and
3 search the whole house because we didn't
4 know where a suspect may have gone within
5 the residence.

6 Q. Or maybe what had been taken?

7 A. Exactly, and Donna Roberts again agreed, she
8 said, "I told you, whatever you have to
9 do, search the whole place, just find
10 this guy."

11 Q. And when she left that residence with Ralph
12 and Rita Roberts, in the entire hour and
13 a half that you had been there with her
14 or maybe two hours now -- how long was
15 she there when Ralph and Rita Roberts
16 were there?

17 A. Probably about a half hour. She had some pets
18 there, two small dogs that she wanted to
19 take with her and they gathered some
20 clothing and were trying to support her
21 and basically had to walk out of the
22 house with her. She had problems getting

1 one of the dogs out from under the bed.

2 Q. Now, in this entire approximately two hour
3 period that you were there with Donna
4 Roberts, did she ever give you any
5 indication that you were not to search
6 the house or any portion thereof?

7 A. No.

8 Q. Did she ever give you any indication that you
9 were not to search her vehicle?

10 A. No.

11 Q. In fact, it was quite the opposite?

12 A. Exactly.

13 Q. And I believe you were there until
14 approximately 6:30 in the morning?

15 A. Yes.

16 Q. And you have in front of you Defendant's
17 Exhibit A, which is an eight page
18 document with a blue sticker on it. I
19 believe those are the items you took from
20 that residence?

21 A. Yes.

22 Q. Were those items all taken in the early

1 morning hours of December 12, 2001?

2 A. No.

3 Q. Were some of those items taken at a later time
4 on December 12, 2001?

5 A. Yes.

6 Q. Are you able to discern which ones were taken
7 at what times or not?

8 A. I am in error. I was looking at sequence
9 sheet number seven and it is in error.
10 There's a mistake on the date at the top.
11 It shows December 13th. This should
12 actually be December 12th. These were
13 taken, all taken in the morning hours of
14 December 12th, not the 13th. These items
15 were all taken in the early morning hours
16 on December 12th.

17 Q. Now, you are referring to page 7, specifically
18 when you say the 13th, right?

19 A. Yes. There's a mistake on the date.

20 Q. Now, later on, I believe you left and you
21 actually went home, is that correct?

22 A. Yes, I did.

1 Q. Sometime earlier or later that day at
2 approximately 10:00 A.M. in the morning
3 on December 12, 2001, you went to the
4 Ralph and Rita Roberts residence in
5 Austintown?

6 A. Yes, prior to Donna Roberts leaving the
7 residence, I told Donna that I was going
8 to need to talk to her again about this.
9 Later the same day, I left the crime
10 scene well after she did, and went home
11 and got a couple of hours sleep. There
12 were some, in my opinion, what I
13 observed --

14 MR. INGRAM: I'm going to object to
15 the opinion and my objection is this is not
16 responsive to the question.

17 THE COURT: Sustained.

18 Q. Let me ask you this. When Donna Roberts left
19 with Ralph and Rita on December 12, 2001,
20 did you indicate that you may need to
21 speak to her again?

22 A. Yes, I did.

1 Q. What was her response to that?

2 A. She told me she would make herself available
3 to me any time I needed her. And she
4 did.

5 Q. Now, on December 12, 2001 at approximately
6 10:00 A.M., did you go to Austintown to
7 Ralph and Rita Roberts?

8 A. Yes, I did.

9 Q. What was your purpose in going there?

10 A. I wanted to obtain a written consent to
11 search, to further search the house and
12 their two vehicles.

13 Q. The one had still not been recovered?

14 A. Yes, the silver Chrysler had yet to be
15 recovered.

16 Q. And you went to her, I believe, with a form
17 that has been marked and it is in front
18 of you as State's Exhibit No. 1. It is a
19 two page document. Is that a fair and
20 accurate copy of the consent to search
21 form that you obtained from her later in
22 the morning of December 12, 2001?

1 A. Yes, it is.

2 Q. And can you explain to this Court how that
3 form was executed?

4 A. Personally went to the Ralph Roberts'
5 residence located in Austintown, with
6 Captain Compton from the Howland Police
7 Department. I was greeted at the door by
8 Mr. Roberts, told him I needed to speak
9 with Donna. He invited me into the
10 residence. Donna was lying on a couch in
11 the living room. She was friendly with
12 us. She was tired. I sat down on the
13 couch next to her. Explained to her that
14 we wanted to go back in and continue
15 searching her house. We had left an
16 officer there at the house when we left
17 the scene and that we wanted to continue
18 to search the house as well as her two
19 vehicles? And she again told me do
20 whatever you have to do. She was very
21 cooperative. Explained the form, the
22 consent form, what we were going to

1 search, and explained to her that she
2 didn't have to allow us to continue to
3 search and read the waiver to her, and
4 she was very positive about it and said
5 do whatever you have to do.

6 Q. And in fact, she did sign that form?

7 A. Yes, she did.

8 Q. And your signature is on that form?

9 A. Yes, it is.

10 Q. And that is a fair and accurate copy, State's
11 Exhibit No. 1 is, of the waiver -- or I'm
12 sorry, the consent to search form?

13 A. Yes, it is.

14 Q. Now, I want to go back to early in the morning
15 of the 12th on 2001, while you were
16 speaking to Miss Roberts, did she tell
17 you where she was and why she was not
18 home prior to finding Robert deceased?

19 A. Yes, she did.

20 Q. Just briefly, what story did she tell you?

21 A. Donna Roberts told me that Robert Fingerhut
22 called her on the telephone, told her

1 that he wanted her to go shopping, she
2 deserved it, and to buy herself something
3 nice. So she went to Giant Eagle to buy
4 some rotisserie chicken for her dogs.
5 She went to Wal-Mart, and she said she
6 also went to Super K-Mart and walked
7 around the store for a couple of hours
8 and then she came home.

9 Q. And that is when she discovered, that is when
10 she played this game with the garage door
11 and discovered Robert Fingerhut?

12 A. Yes.

13 Q. At that time, did you have any reason to
14 believe that her story was false?

15 A. In fact, there was a bag on the kitchen table
16 with some of the items she told me she
17 purchased, some make-up and lighter and a
18 receipt. I'm not certain but I am pretty
19 sure the time on the receipt was 9:37
20 P.M., which was consistent with what she
21 told us.

22 Q. Eventually though -- well, strike that. On

1 December 11, 2001 and December 12, 2001,
2 was Donna Roberts ever handcuffed?

3 A. Never.

4 Q. Was she ever placed under arrest?

5 A. Never.

6 Q. During your interactions with her, bolstering
7 the midnight to 2:00 A.M. time period and
8 the time period again at 10:00 in the
9 morning on December 12th, did she appear
10 to you to be under the influence of
11 drugs?

12 A. No.

13 Q. During that same time period, did she appear
14 to be under the influence of alcohol?

15 A. No.

16 Q. Did she freely and knowingly give you consent
17 to search her residence?

18 MR. INGRAM: Objection.

19 Q. Based on what you observed.

20 THE COURT: He can describe what she
21 looked like and her attitude, but it is a
22 conclusion I don't think he may make. Sustained.

1 December 11, 2001 and December 12, 2001,
2 was Donna Roberts ever handcuffed?

3 A. Never.

4 Q. Was she ever placed under arrest?

5 A. Never.

6 Q. During your interactions with her, BOLSTERING
7 the midnight to 2:00 A.M. time period and
8 the time period again at 10:00 in the
9 morning on December 12th, did she appear
10 to you to be under the influence of
11 drugs?

12 A. No.

13 Q. During that same time period, did she appear
14 to be under the influence of alcohol?

15 A. No.

16 Q. Did she freely and knowingly give you consent
17 to search her residence?

18 MR. INGRAM: Objection.

19 Q. Based on what you observed.

20 THE COURT: He can describe what she
21 looked like and her attitude, but it is a
22 conclusion I don't think he may make. Sustained.

1 Q. Did eventually Donna Roberts become a suspect
2 and was in fact actually charged?

3 A. Yes.

4 Q. And I believe you presented to this very
5 Court, an affidavit charging her with the
6 murder of Robert Fingerhut over a week
7 later, is that correct?

8 A. Yes, it is.

9 Q. So, until that affidavit was actually filed,
10 she was not -- well, strike that. It was
11 not until a number of days later, over a
12 week later she was actually determined to
13 be the suspect and involved in this to
14 the extent that you could file a criminal
15 charge?

16 A. Yes.

17 Q. The individual that you spoke to on December
18 12, 2001, who gave you consent to search
19 her house, is she here in this Courtroom?

20 MR. INGRAM: Objection.

21 THE COURT: Defendant has already
22 been identified.

1 Q. I would like this witness to identify.

2 MR. INGRAM: I'll stipulate
3 identification of the Defendant but that is not why
4 I objected. There's a factual conclusion contained
5 in the question and that is why I objected.

6 Q. Is the individual who told you to do whatever
7 it took to catch the person who did that
8 to Robert Fingerhut on December 12, is
9 she in the Courtroom?

10 A. Yes, she is.

11 MR. INGRAM: Stipulate
12 identification of Donna Roberts.

13 MR. BECKER: Thank you.

14 CROSS EXAMINATION BY MR. INGRAM:

15 Q. How are you?

16 A. Good, Sir.

17 Q. We know each other, don't we?

18 A. Yes, Sir.

19 Q. I got a couple of questions that -- Ken Bailey
20 says no. First off, what do you have in
21 front of you there? Those are Exhibits?

22 A. I have Defendant's Exhibit A, which is an

1 eight page, eight copy pages of Howland
2 Police Department property receipts.
3 State's Exhibit No. 1 is a two page
4 document which is an accurate copy of the
5 Howland Police Department consent to
6 search form.

7 Q. You have no police reports in front of you?

8 A. No, Sir.

9 Q. And while you testified on direct examination,
10 you were reading from no police reports?

11 A. No, Sir.

12 Q. You responded to 254 Fonderlac at
13 approximately 1235?

14 A. Yes.

15 Q. And you were actually the third Howland police
16 officer on the scene?

17 A. I believe --

18 Q. The first would be Ray, Pollcino, Sergeant
19 Dillon and then you?

20 A. That would make me the fourth, yes.

21 Q. I can't add very well, can I? You were the
22 fourth. When you arrived, you first

1 spoke with Patrolman Albert Ray?

2 A. Yes.

3 Q. And you inquired of Patrolman Ray as to what
4 he observed and what he did when he
5 arrived at the scene?

6 A. Yes.

7 Q. And it is a fact, is it not, Patrolman Ray
8 told you that he and Officer Pollcino had
9 conducted a protective sweep of the
10 interior and the exterior of the
11 residence, correct?

12 A. Yes.

13 Q. After you talked with Patrolman Ray, do you
14 talk to Sergeant Dillon at all?

15 A. I'm sure I did.

16 Q. Do you recall what you spoke with Sergeant
17 Dillon about? Do you remember?

18 A. No, I don't.

19 Q. Fair enough. When you entered the residence
20 where is Donna Roberts?

21 A. She's in the master bedroom.

22 Q. She in there alone or in the company of

1 someone?

2 A. She's alone.

3 Q. Do you know if she was attended to by
4 emergency medical personnel on this
5 particular evening at all?

6 A. Yes.

7 Q. She was?

8 A. They spoke to her, yes.

9 Q. Did they treat her? Did they try to calm her
10 down? Were you present for this?

11 A. Yes.

12 Q. Were you in the room when emergency personnel
13 were with her?

14 A. No.

15 Q. Do you know if they took her blood pressure?

16 A. No.

17 Q. Do you know if they requested that she go to
18 the hospital?

19 A. No, I don't.

20 Q. Did you first see Donna Roberts or did you
21 first hear Donna Roberts?

22 A. First heard Donna Roberts.

1 Q. What did you hear Donna Roberts, what did you
2 hear?

3 A. "Oh, my Robert. Oh, my Robert."

4 Q. And was she screaming this?

5 A. Repeatedly, yes.

6 Q. When you talked to Patrolman Ray, did he tell
7 you that when he and Officer Pollcino
8 arrived that Donna Roberts was
9 hysterical?

10 A. I don't know, Sir.

11 Q. You described the 911 call or at least a
12 portion of it for Mr. Becker. Are you
13 aware that the 911 caller described
14 Mrs. Roberts as hysterical?

15 A. Yes.

16 Q. And you knew that at the time, yet you walked
17 into the bedroom and began talking to
18 her?

19 A. I'm not sure what your question is.

20 Q. When you first approached Donna Roberts in the
21 bedroom, you knew that the 911 caller had
22 described her as hysterical?

1 A. At that time, I wouldn't have known that. I
2 do know later that she was.

3 Q. Would you say she was hysterical when you
4 first talked to her?

5 A. I have seen a lot of people and I guess I
6 would describe hysterical a little
7 different. She appeared to me to be
8 overcome with grief.

9 Q. Do you recall telling Mr. Becker that she was
10 emotional?

11 A. Yes.

12 Q. She was distraught?

13 A. I guess that is fair.

14 Q. That is a fair statement?

15 A. That is fair.

16 Q. And when you would talk to her, before you
17 could get information from her, you had
18 to calm her down so that you could
19 actually speak with her, correct?

20 A. Yes.

21 Q. Because initially, you would ask questions,
22 but she was unable to give you responses?

1 A. No.

2 Q. She was able to respond before or after you
3 calmed her down?

4 A. Well, she would go in and out of these periods
5 where sometimes she would appear
6 emotional and other times she wasn't
7 emotional at all.

8 Q. Ran the full gamut from emotional to calm?

9 A. Yes.

10 Q. Have you ever see anyone in shock?

11 A. Yes.

12 Q. Would you say running the full gamut of
13 emotions is someone in shock?

14 A. No.

15 Q. Was Donna Roberts crying?

16 A. Yes.

17 Q. And when you first saw her, she was screaming,
18 crying, and then appeared very emotional?

19 A. Yes.

20 Q. And those are your words in your police
21 report, are they not?

22 A. I can look at that. I would say that is

1 accurate.

2 Q. Page one, the fourth paragraph?

3 A. Okay.

4 Q. The fourth line, "The victim screaming, crying
5 and appeared to be very emotional for
6 several minutes."

7 A. What you have handed me, that's not what it
8 says.

9 Q. I must have handed you the wrong thing. I'm
10 sorry. I'll give you this one. Are
11 those your words, "screaming, crying and
12 very emotional"?

13 A. Yes.

14 Q. For several minutes?

15 A. Yes.

16 Q. And that is when you are first trying to
17 elicit information from her?

18 A. Yes.

19 Q. And then you tell her that she has to be
20 strong?

21 A. Yes.

22 Q. And she has to try and answer some questions?

1 A. Yes.

2 Q. And she takes a couple of minutes, she
3 composes herself and she begins answering
4 questions?

5 A. Yes.

6 Q. Now you made the decision that someone should
7 be called to assist Donna Roberts?

8 A. Yes.

9 Q. Was that due in part to her emotional
10 condition?

11 A. Typically any time that we deal with a death
12 of anyone, we always try to bring a
13 neighbor, a family member, a close friend
14 or someone to sit with the grieving
15 person.

16 Q. Fair enough. You have described for
17 Mr. Becker a series of conversations you
18 had with Donna Roberts regarding the
19 house as a crime scene and procession of
20 the crime scene or processing the house?

21 A. Yes.

22 Q. Do you recall discussing that with Mr. Becker?

1 A. Yes.

2 Q. I believe you told Mr. Becker that the first
3 two -- that there were three of those
4 conversations in total, am I correct?

5 A. Yes.

6 Q. The first two of those conversations preceded
7 the arrival of Ralph and Rita Roberts?

8 A. Yes.

9 Q. Where are you and Donna Roberts physically
10 located when you have these first two
11 conversations?

12 A. In the master bedroom of the house.

13 Q. Do you have a witness to these conversations?

14 A. It would be Albert Ray or Detective Sergeant
15 Dillon.

16 Q. When you go in there and discuss with Donna
17 Roberts that the house is a crime scene,
18 that it is going to take a long time to
19 process it, is that the kind of
20 conversation where you wanted to have a
21 witness present for, so at a later time
22 you could say it is not just in my word,

1 I have somebody else that heard this?

2 A. No.

3 Q. So you don't know if you have a witness to
4 these two conversations or not?

5 A. No. Whenever I went into the bedroom and
6 spoke with Donna Roberts, somebody went
7 in with me. That wasn't the reason that
8 I took someone in the bedroom with me.

9 Q. So that you would have a witness?

10 A. No, that is not the reason.

11 Q. But it is your testimony that these two
12 conversations were witnessed either by
13 Patrolman Ray or Sergeant Dillon?

14 A. Yes.

15 Q. And you began the first conversation by
16 stating to Donna that the house had to be
17 handled as a crime scene and searched
18 because you have no idea where or what
19 the perpetrator may have done or where in
20 the house the perpetrator may have gone;
21 is that correct?

22 A. Yes.

1 Q. And she told you in your words, "Do whatever
2 you have to, just find who did this"?

3 A. Yes.

4 Q. Is that the end of the first conversation
5 regarding the processing of the home?

6 A. The first conversation we started talking to
7 her, Donna Roberts almost appeared mad,
8 because I was asking her some of the
9 questions in which Officer Ray had asked
10 prior to my arrival, and indicated to me
11 that she had already answered some of
12 these questions and just wanted us to get
13 on with our job and find out who did
14 this. The reason that I would have
15 somebody with me is that with her being
16 upset, sometimes it is easier for two of
17 us to go in and talk to her. Maybe I
18 can't think of something to try and calm
19 her down, the other officer can.

20 Q. Okay. So do you recall who you took into the
21 bedroom with you to assist in calming
22 Donna Roberts down, Officer Ray, Sergeant

1 Dillon or a combination?

2 A. I believe it was Officer Ray that was with me.

3 Q. And did I fairly describe that conversation?

4 A. Yes.

5 Q. Basically it is a crime scene, we have to
6 process it, go ahead and do it?

7 A. Yes, that is fair.

8 Q. When you said it is a crime scene, we have to
9 process the scene, that is a statement of
10 fact, is it not?

11 A. What do you mean?

12 Q. You declared the residence a crime scene, did
13 you not, that was your statement?

14 A. No. I told her that there could be evidence
15 anywhere in the house, and that we had no
16 idea what happened, that her husband had
17 been shot, a perpetrator could have went
18 anywhere in the house and could have left
19 a clue as to what had transpired, a
20 bullet lodged in the wall.

21 Q. Why don't you go to the second page of your
22 report, second paragraph?

1 A. Okay.

2 Q. Does it say R.O., meaning you explained to
3 Donna the entire house needed to be
4 handled as a crime scene?

5 A. Which line are you referring to?

6 Q. First line of the second full paragraph on
7 that page.

8 A. Yes.

9 Q. Is that what you told her?

10 A. Yes.

11 Q. That is not a factual assertion to you?

12 A. Is the entire house a crime scene in my
13 opinion?

14 Q. Is that what you told her?

15 A. Yes.

16 Q. You told her it was a crime scene, right?

17 A. Yes.

18 Q. And you told her you were going to process the
19 crime scene, correct?

20 A. With her consent, yes.

21 Q. Was that what it says there? You said you
22 told her it was a crime scene and that we

1 had to process the scene?

2 A. Yes.

3 Q. Then she tells you, "Do whatever you have to,
4 just find the guy," correct?

5 A. Yes.

6 Q. Now when is the second conversation regarding
7 the house is a crime scene and the
8 processing of the house?

9 A. Well, up there if you are reading, I did type
10 every single word or every conversation I
11 had.

12 Q. I'm not asking you from the report, I'm asking
13 you from your recollection.

14 A. Before this paragraph, that conversation would
15 have taken place.

16 Q. It is not described in your report, correct?

17 A. No.

18 Q. Is there someone who was within ear shot of
19 the first conversation, Patrolman Ray,
20 Sergeant Dillon perhaps?

21 A. Pretty much anywhere on the first floor of
22 that residence, other than the back

1 computer room, I would say you are within
2 ear shot of where we were at.

3 Q. Did you purposely try to have somebody within
4 ear shot of that first conversation?

5 A. You know, when I needed information from Donna
6 Roberts, she was cooperative. I would
7 try to get someone to walk in with me and
8 take for example, the bag of, from
9 Wal-Mart, I don't see it here in my
10 report, I know that we recovered it and
11 that she told me about it, but it is not
12 here in the report.

13 Q. Basically, I think what you are telling me, is
14 you don't know if there was someone
15 within ear shot of this first
16 conversation or not?

17 A. No. I told you other than the computer room,
18 there would have been somebody within ear
19 shot of me.

20 Q. And who would that have been?

21 A. Patrolman Ray or Sergeant Dillon.

22 Q. The three conversations you had with Donna

1 Roberts in terms of being within ear
2 shot, we would be talking about Patrolman
3 Ray or Sergeant Dillon?

4 A. Okay.

5 Q. Am I correct? I'm asking you a question.

6 A. Yes.

7 Q. And they have already testified?

8 A. Yes.

9 Q. Now the third conversation is after Ralph and
10 Rita Roberts arrive, correct?

11 A. Yes.

12 Q. Let me back up to the first one, the one not
13 described in your report. When that
14 conversation takes place, is Donna
15 Roberts in the bedroom if you remember?

16 A. The first conversation I had with Donna
17 Roberts?

18 Q. Yes.

19 A. It would have been in the bedroom.

20 Q. Third one is as the three, as Ralph, Rita and
21 Donna are leaving, so that is sort of in
22 the hallway near the living room, am I

1 correct?

2 A. I believe it started in the bedroom and they,
3 that one kind of moved back and forth
4 between the bedroom and the hallway, and
5 the formal living room, because Donna
6 kept going back to get clothing and her
7 dogs, supplies for her dogs.

8 Q. And on the way out, did Donna ask you what you
9 were going to do now?

10 A. I don't recall that.

11 Q. What do you recall the third conversation
12 about the crime scene and the processing
13 of the crime scene?

14 A. I reiterated to Donna Roberts that we needed
15 to search the entire house. Look for
16 evidence that may have been left
17 somewhere in the house. And she again
18 told me to do whatever you have to do,
19 search the whole place. She was pretty
20 positive about it, and she just wanted us
21 to find out who killed Robert Fingerhut.

22 Q. Would you go to page three of your report, the

1 last full paragraph on that page?

2 | A. Yes.

3 Q. Is that the conversation we're talking about,
4 described in that paragraph?

5 | A. No.

6 Q. The conversation you are talking about now,
7 does that occur before the conversation
8 described at page three of your report or
9 after?

10 A. I don't know if you are trying to confuse me
11 or what conversation you are referring
12 to, but I am under the impression you are
13 talking about the conversation I had with
14 Donna Roberts in the presence of her
15 brother Ralph, and Rita, which is
16 referred to in the final page, I believe,
17 of the supplemental or close to it. If
18 you can point out exactly what you are
19 asking me, I'll certainly be glad to
20 answer it.

21 Q. On page three, the last paragraph, it says
22 that Donna spoke with Ralph and decided

1 to leave with her brother and
2 sister-in-law. Donna asked R.O., that
3 would be you, correct, "What are you
4 going to do now?" And you responded that
5 officers are going to continue processing
6 the crime scene and search for more
7 evidence."

8 A. Okay.

9 Q. And Donna said, "Okay, do whatever you have
10 to." Is that the conversation we're
11 talking about, where Ralph and Rita
12 Roberts are present?

13 A. No, when that took place, she had talked to
14 Ralph on the phone, I believe, and Ralph
15 wasn't standing there when that took
16 place.

17 Q. Why don't you read the rest of that paragraph?

18 A. "Donna's brother Ralph Roberts was contacted
19 by the Austintown Police Department and
20 asked to come to the scene at the request
21 of the Howland Police Department. Donna
22 spoke with Ralph and decided to leave

1 with her brother and sister-in-law, Rita
2 Roberts. Donna asked R.O., "What are you
3 going to do now? R.O. told Donna that
4 officers are going to continue to process
5 the crime scene and search for more
6 evidence. Donna said, 'Okay, do whatever
7 you have to do.' R.O. again told Donna
8 officers would need to spend most of the
9 night processing the house and it would
10 be best if she left with her brother for
11 support. R.O. also told Donna officers
12 would need to speak with her later in the
13 day, to further discuss the
14 investigation. Donna told R.O. to
15 contact her any time at Ralph's. Ralph
16 Roberts provided his address, 931 Kirwin
17 Street, Austintown, Ohio, telephone
18 number, area code 330/792-9554 and told
19 R.O. to call if anything was needed."

20 Q. Okay. Is that the conversation where they are
21 leaving?

22 A. Yes, where they are going out the door.

1 Q. Yes. That is the third conversation regarding
2 the crime scene and the processing of the
3 crime scene, right?

4 A. Yes.

5 Q. So, I was right, it is on page three?

6 A. Yes.

7 Q. Thank you. You drove to the Roberts'
8 residence in Austintown after catching a
9 few hours sleep at approximately 10:00 to
10 get Donna Roberts to sign a consent to
11 search form, is that right?

12 A. No.

13 Q. When you went to the Roberts' residence that
14 morning at approximately 10:00 A.M. --
15 did you go there at 10:00 A.M.?

16 A. I went there and I was driven there by
17 Detective Compton.

18 Q. You did go there?

19 A. Yes, Sir.

20 Q. Wasn't the purpose in going there to get a
21 consent to search form signed?

22 A. Yes.

1 Q. Did I ask you something differently?

2 A. Yes.

3 Q. What did I ask you?

4 A. You threw in a bunch of information, some of
5 which wasn't correct exactly.

6 Q. What wasn't correct?

7 A. You said, "You drove to Ralph Roberts house."

8 Q. The two of you went there to get a consent to
9 search form?

10 A. Yes.

11 Q. Had you received any communication from Donna
12 Roberts from the time you left the
13 residence at approximately 6:49 and
14 10:00, when you head to the Roberts'
15 residence in Austintown?

16 A. No.

17 Q. So, she did not call you and say, "By the way,
18 I revoke or cancel that consent you got
19 earlier"?

20 A. No.

21 Q. Is it your idea to drive to Austintown to get
22 the consent to search form signed?

1 A. We need to --

2 Q. Was it your idea?

3 A. No.

4 Q. Was it Dennis Watkins' idea by any chance?

5 A. It was Detective Compton contacted me.

6 Q. Captain Compton?

7 A. Yes.

8 Q. He contacted you?

9 A. Yes.

10 Q. Told you that we should go get a consent to
11 search form signed?

12 A. Yes.

13 Q. So, it was his idea?

14 A. He's the one that contacted me, Sir.

15 Q. What role did he have in this investigation,
16 Captain Compton?

17 A. Well, at the point of us leaving, he would
18 have handled, assisted in handling public
19 relations with the chief, speaking with
20 witnesses.

21 Q. Did he speak with any witnesses?

22 A. I believe he did, but I'm not certain. Yes,

1 | he did.

2 Q. Who did he speak with?

3 A. He spoke with Donna Roberts, he spoke with
4 Ralph Roberts, and Rita Roberts.

5 Q. Other than those three, did he talk to anyone?
6 Withdraw the question. At 254 Fonderlac
7 before you leave, did you tell Donna
8 Roberts at any point in time that her
9 consent was necessary for you to process
0 the house?

11 A. Did I tell her it was necessary?

12	Q. Yes.
----	---------

13 A. I requested her consent to continue searching
14 her house.

15 Q. That is not my question. Did you ever tell
16 her, "We can not process this house, we
17 can not search this house, unless you
18 give us your consent"?

19 A. No. I felt that we already had her consent.
20 It had been implied.

21 Q. You never told her that before you thought you
22 had consent or after you thought you had

1 consent, correct?

2 A. I knew I had consent. She told me I had
3 consent.

4 Q. Let's back up. At any point in time when you
5 are in this house, do you tell her, "We
6 can't do this unless you give us your
7 consent"?

8 A. No, I did not tell her that.

9 Q. At any point in time while you are in the
10 Fonderlac residence, do you tell Donna
11 Roberts that she does not have to
12 consent?

13 A. At Fonderlac?

14 Q. Yes.

15 A. No.

16 Q. I don't want to belabor a dead horse and I
17 know that I have an interminable
18 reputation for doing that. We have
19 talked about three conversations you had
20 with Donna Roberts about the house is a
21 crime scene, the processing of it, and
22 her telling you to go ahead. Do you

1 recall the interchange we have had?

2 A. Yes.

3 Q. I want you to think about these three
4 conversations and is there anything about
5 those conversations you haven't told us
6 about?

7 A. There's a lot. There's a lot of stuff there.

8 Q. Then you are going to have to tell me about
9 it?

10 A. Well, Donna throughout the time she was there,
11 during that two hours, occasionally there
12 would be passing and exchanging in words.

13 Q. I am only talking about -- I'm not talking
14 about the questions you asked her about
15 her whereabouts, what she did or any of
16 that. I am only talking about the three
17 conversations you had about the house is
18 a crime scene, and the processing of the
19 house?

20 A. Okay.

21 Q. Are there anything about those three limited
22 conversations that you haven't told us

1 about?

2 A. No, I don't think so.

3 Q. Now you have before you State's Exhibit No. 1.

4 And that is the consent to search form
5 that is signed later in the day at the
6 Roberts' residence at approximately 10:25
7 A.M.

8 A. Yes.

9 Q. And that document specifically describes
10 Donna's motor vehicle?

11 A. Two of them, Sir, yes.

12 Q. In your oral conversations with Donna Roberts
13 earlier at 254 Fonderlac, you and she
14 never discussed the motor vehicles
15 specifically, did you?

16 A. There was slight conversation about, during
17 some of our conversations about her
18 whereabouts, she indicated she had been
19 at Red Lobster and had dinner. I had
20 noticed there was some king crab legs
21 laying on the floor, so when I told her
22 about that, and she says, "Yes, I

2 Q. I'm not asking about crab legs. When you
3 asked her, when you told her that you had
4 to search the house, you never told her
5 you had to search the car, did you?

7 Q. And in fact, the first document or the first
8 time her car is mentioned is at 10:25 as
9 set forth in State's Exhibit No. 1,
10 correct?

12 Q. Are you saying that she verbally told you to
13 go ahead and search the car?

16 Q. Did she ever tell you it is okay to search my
17 car?

21 Q. But you are saying in your opinion, because
22 the car was there, you had permission to

1 search the car?

2 A. Yes. Yes, I did.

3 Q. And you searched the car, in point of fact,
4 well before that consent to search form
5 was executed, correct?

6 A. Portions of it, yes.

7 Q. The trunk portion?

8 A. We briefly looked over the whole car.

9 Q. Did you seize the letters in the trunk before
10 or after the consent to search form was
11 executed?

12 A. Before.

13 Q. On December 12, 2001, do you know if Donna
14 Roberts was under the care of a
15 psychiatrist?

16 A. She told me she was being treated by Dr. Ariza
17 for post menopausal depression. I don't
18 know if he's a psychiatrist or what kind
19 of doctor he is, Sir.

20 Q. Did you know her before December 12th of 2001?

21 A. No, Sir.

22 Q. You have no idea what her emotional condition

1 was prior to that date?

2 A. No.

3 Q. Handing you what has been marked as
4 Defendant's Exhibit B. Would you
5 identify State's Exhibit or Defendant's
6 Exhibit B, please?

7 A. Defendant's Exhibit B is a second page of a
8 supplemental Howland police report
9 written by Sergeant Frank Dillon, dated
10 12-12-01, December 12, 2001.

11 Q. Describing what?

12 A. A list of prescription medications that were
13 found in the residence that were written
14 in the name of Donna Roberts.

15 Q. About how many medications are listed?

16 A. 23.

17 Q. Do you know if any of those are psychotropic
18 medications?

19 A. No, I don't.

20 Q. Do you know if any of those are mind altering
21 substances?

22 A. No, I don't.

1 Q. Do you know if Donna Roberts had consumed any
2 of that medication on December 12, 2001
3 before you spoke with her?

4 A. No, I don't.

5 Q. Was their marijuana discovered in the
6 residence at 254 Fonderlac?

7 A. Yes.

8 Q. Do you know if Donna Roberts had smoked any of
9 that marijuana on that particular evening
10 before you had talked to her?

11 A. No.

12 Q. And again before you proceeded to the Roberts
13 residence in Austintown, no one had
14 withdrawn or revoked the oral consents
15 you claimed to have been previously
16 granted, correct?

17 A. Yes, Sir.

18 MR. INGRAM: Thank you. I have no
19 further questions.

20 REDIRECT EXAMINATION BY MR. BECKER:

21 Q. Detective, defense counsel asked you if Miss
22 Roberts ever gave you or specifically

1 said to you, "Search my car." And your
2 indication was that she had not?

3 A. Right.

4 Q. Did she ever give to you the words, "Search my
5 home"?

6 A. No.

7 Q. In fact, her words were much broader, correct?

8 A. Yes.

9 Q. And those words, not to be repetitive and I
10 have killed a few dead horses myself,
11 were what?

12 A. "Do whatever you have to do."

13 Q. And did you take, "Do whatever you have to
14 do," to include searching the home?

15 A. Yes.

16 Q. Did you take that to search the vehicle?

17 A. Yes.

18 MR. WATKINS: I have nothing
19 further.

20 MR. INGRAM: Nothing further.

21 THE COURT: Thank you, Paul. You
22 are excused.

1 MR. BECKER: The State would have no
2 further witnesses in this matter. We would move
3 for the admission of for the limited value that
4 there was the consent to search, State's Exhibit
5 No. 1, which is a two page document. We have no
6 objection to the Defendant's Exhibits A and B.

7 THE COURT: Any objection?

8 MR. INGRAM: I have no objection. I
9 move to introduce A and B.

10 MR. BECKER: We have no objection.

11 THE COURT: Plaintiff's Exhibits 1
12 and Defendant's Exhibits A and B are admitted.
13 Anything that the Defendant wishes to present at
14 this time?

15 MR. INGRAM: The Defense rests.

16 THE COURT: Is there any argument at
17 this time or briefs?

18 MR. BECKER: Just very briefly, I
19 think according to earlier discussions with
20 Attorney Ingram, we would like to brief this matter
21 and I know the initial motion to suppress was filed
22 back in October. I'm sure the Court has read that.

1 The State's tact obviously is going to be we
2 realize, there's no exception for murder exception
3 to the search warrant, to the fourth amendment.
4 Our argument here, and I think it has been borne
5 out, is clearly that it was implied consent by her
6 inviting them to her home, pursuant to the 911
7 call. I would like at least a week, if I could. I
8 would anticipate I would be able to get this done
9 this weekend providing Court with a lengthy list of
10 authority, detailing the law and implied consent as
11 an exception to the search warrant. And I don't
12 know if Mr. Ingram would need an additional week or
13 two to respond to that.

14 MR. INGRAM: Since the only time I
15 have ever heard of implied consent is when it
16 involves a motorist who is detained for drunk
17 driving, it would probably require me some time to
18 read these cases.

19 THE COURT: Let me bring up a couple
20 of issues that you should cover, and that is, it
21 was argued in the brief that there's no such thing
22 as a crime scene investigation. I think that is

1 pretty well established.

2 MR. BECKER: Absolutely agree with.

3 THE COURT: On this consent that the
4 State alleges was given by Miss Roberts, there's a
5 consent before and after evidence arose, whereby
6 she might become a suspect. I think the law maybe
7 makes a distinction there. From the evidence
8 presented, there's no reason to suspect -- the
9 facts can be argued whether that was valid consent.
10 I know what the other point was. I think that the
11 Defense is arguing objectivity or subjectivity
12 rather than objectivity and I think that there has
13 to be something on the police looking at the
14 situation objectively as opposed to your argument
15 that well, she wasn't cognizant or aware of what
16 she was doing. That is devoid of proof at this
17 point. One can assume things, but I think those
18 points should be covered in your briefs.

19 MR. BECKER: That will be done and I
20 don't know, do we want to set time frames?

21 THE COURT: I would think that --

22 MR. BECKER: If I could have until

1 next Thursday.

2 THE COURT: This should be done
3 within the next, two, three weeks. Mr. Ingram is
4 indicating I should take two weeks, if that is okay
5 with the Court.

6 MR. INGRAM: Give the Prosecutor two
7 weeks, and we'll file a response within one week
8 thereafter.

9 THE COURT: That is fine. One other
10 point before I leave you go here. We have a
11 conflict with that Jury date, you are aware of
12 that?

13 MR. BECKER: Yes.

14 THE COURT: Is there any objection,
15 they have the regular Jury coming in that day and
16 the Jury Commissioner cannot handle that many
17 people on two Juries. Could we have this start the
18 day after that?

19 MR. INGRAM: Yes.

20 MR. BECKER: We probably need
21 another waiver of a day then.

22 THE COURT: That's reason I bring it

1 up. Is there a time problem?

2 MR. INGRAM: Considering the fact
3 that we have had Defense motions filed whatever.
4 We would waive the statutory period for speedy
5 trial by one day and consent to a one day
6 continuance of the trial.

7 THE COURT: We have got a form here.

8 MR. BECKER: It is obvious that the
9 motion to suppress has followed the speedy trial
10 time.

11 MR. INGRAM: We're happy to sign the
12 waiver.

13 (OFF THE RECORD)

14 MR. INGRAM: I'll proffer to the
15 Court a waiver of speedy trial, duly executed by
16 Donna Roberts, extending the speedy trial period by
17 an additional 45 days until April 8, 2003.

18 THE COURT: Ms. Roberts, you
19 understand what this?

20 MS. ROBERTS: Yes.

21 THE COURT: I'll approve the waiver.
22 Thank you all.

1 MR. BECKER: Thank you.

2 (End of Hearing at 4:05 p.m.)

3

4

5

6 Wednesday, March 26, 2003; In Open Court at 1:55 p.m.

7

8 THE COURT: I have had a brief
9 meeting with counsel, and I think this hearing that
10 was set for today is somewhat premature. There's a
11 motion to suppress that I expect to have ruled on
12 by the first of the week. And the other matter
13 that we have discussed here probably could have
14 been handled by a phone conversation.

15 So, in any event, there's nothing of
16 substance that we're able to cover today. I did
17 mention to you gentlemen that there are some
18 outstanding motions that we have to get journalized
19 before April 8.

20 MR. BECKER: If the Court would
21 prefer the State to prepare those, I will. The
22 Court never directed me.

THE COURT: It's not blaming you.

1 It is my fault as much as anybody. I'll discuss
2 that with you later as to what procedure we wanted
3 to use here. Anything else before the Court today
4 on this matter?

5 MR. INGRAM: No, Your Honor. Well,
6 there's one issue on the orientation instructions.
7 We'll work on a draft of that and submit it
8 jointly.

9 THE COURT: I understand you pretty
10 much have an agreement. If you have any problems,
11 let me know.

12 (End of Hearing at 1:56 p.m.)
13
14
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22

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.

Mary Ann Mills

MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO) VOLUME II
5 Plaintiff)
6 -vs-) JURORS INITIAL APPEARANCE
7 DONNA M. ROBERTS) HARDSHIP EXCUSES
8 Defendant)

9
10 BE IT REMEMBERED, that on Tuesday, April 8,
11 2003, and Wednesday, April 9, 2003, these proceedings
12 came on to be heard before one of the Judges of this
13 Court, John M. Stuard, in Courtroom No. 2, on High
14 Street, Warren, Ohio, before the case heretofore
15 filed herein.

16
17
18
19 Mary Ann Mills, RPR
20 Official Court Reporter
21 Trumbull County, Ohio
22

A P P E A R A N C E S

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I N D E X

VOLUME II:

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1 Tuesday, April 8, 2003; In-chambers at 9:25 A.M.:

2 THE COURT: For the record, we're
3 in-chambers, prior to starting this matter. The
4 prospective Jury is awaiting us. We have had
5 submitted a request to be excused by Juror No. 142,
6 Rick Hall, and for medical purposes. It is my
7 understanding that both sides are in agreement that
8 he should be excused.

9 MR. BAILEY: That is correct.

10 MR. INGRAM: That is correct.

11 MR. JUHASZ: That is correct. This
12 morning Attorney Ray Tisone, who was on our Jury
13 list, came in. I had a conversation with
14 Mr. Bailey, and we both agreed that he should be
15 excused without objection from either side. I
16 think he's Juror No. 327.

17 MR. BAILEY: No objection.

18 THE COURT: Attorney Bluedorn
19 approached me concerning a Robin Iftt, I F T T.
20 Their office has a civil action against Donna
21 Roberts. No problem with excusing her.

22 MR. JUHASZ: No objection.

1 MR. BAILEY: No objection.

2 (OFF THE RECORD)

3 THE COURT: For the record, it is
4 difficult to explain on the record at this juncture
5 the conundrum that has been raised this morning by
6 various motions that have been filed. We have
7 awaiting us in the Courtroom, 300 of our citizens
8 of Trumbull County who have given their time today
9 to be here, and there has been a notice of appeal
10 filed to the Eleventh District Court recently of
11 appealing the motion to suppress ruling. There's
12 an argument or a thought that this Court has no
13 jurisdiction to proceed at this point until that
14 matter is decided. I'm sure that every effort will
15 be made to have The Court of Appeals rule on that
16 motion as swiftly as possible. The Court has
17 requested of all parties an opportunity to proceed
18 through the preliminary orientation of this Jury in
19 order to facilitate the problem that will exist if
20 we send them all home today without doing anything.
21 I have requested of all parties that we be
22 permitted to go through the standard introduction

1 of why we're here and cover some of the proceedings
2 that will be involved in this trial once it does go
3 forward -- well, it will go forward at some point.

4 Both sides have thought this through, and
5 it is my understanding that they are in agreement
6 to permit the Court to orientate the Jury, to cover
7 nothing of any substance other than deciding this
8 morning which jurors will not be able to serve in
9 any event for whatever reason or excuse they have
10 and to allow that remaining pool of jurors an
11 opportunity to be sent home and await whatever
12 future direction this case takes.

13 Have I pretty well stated the situation?
14 Anybody wish to add anything to that?

15 MR. BAILEY: I have a question. Can
16 we have them fill out questionnaires, too, at this
17 point? Would you waive that so they would be able
18 to fill out their questionnaires today? Or bring
19 them back in to fill their questionnaires out at a
20 later date?

21 MR. INGRAM: I was of the opinion
22 that they should fill out the questionnaires when

1 they come to be questioned anyhow.

2 THE COURT: Any problem with giving
3 them the questionnaires? Most of them will fill
4 them out and bring them back; of the ones that
5 don't, we give them one that morning.

6 MR. INGRAM: I have no problem with
7 that.

8 THE COURT: Have I stated it
9 correctly that there's no objection to proceeding
10 on that limited basis?

11 MR. INGRAM: You have from the
12 Defense prospective.

13 MR. BAILEY: And with the State.

14 THE COURT: I thank you all for
15 that. For the record, the point on the presence of
16 the Defendant, do you waive at this point her
17 presence?

18 MR. JUHASZ: Yes, Sir.

19 THE COURT: For the rest of the
20 trial, and again I am uncomfortable as you are
21 about setting a rule that applies throughout the
22 trial, because there's always things that come up.

1 I'll usually ask when we have a side bar or
2 in-chambers, do you waive the presence of the
3 Defendant? I'm going to ask you when you waive the
4 presence of the Defendant throughout the trial
5 unless you specifically need her presence.

6 MR. JUHASZ: Yes.

7 THE COURT: I'll ask you at any time
8 that I feel that she should be here, I'll mention
9 that, but I find that during most of the argument,
10 the presence of the Defendant adds nothing. It is
11 nothing they understand most of the time I suspect.

12 One last point, all motions that have not
13 been granted that have been previously filed are
14 hereby overruled. There are some motions on the
15 record that have not been ruled upon that have to
16 be ruled upon during the course of the trial. The
17 Court will endeavor to do that.

18 MR. INGRAM: But there's also been
19 motions that have been granted or granted in part,
20 and I believe Mr. Becker was going to do a judgment
21 entry, then he got side tracked with this trial
22 that he's in. He has not done this judgment entry.

1 What I submit is that the three of us at the first
2 opportunity, try to sit down and create that
3 judgment entry.

4 THE COURT: I talked with Ken
5 yesterday about this and you're right, this has
6 been delayed because of that, and I think it is
7 most proper that you be able to inspect those
8 before. Because these were all done on the record,
9 but nothing was journalized as such.

10 MR. BAILEY: I think that by the
11 time The Court of Appeals rules, he will be done by
12 this week. He should be done by the end of the
13 week.

14 MR. INGRAM: You don't want to do
15 it. He's trying the case.

16 (End of in-chamber discussion.)

17

18 In Open Court at 9:50 A.M.:

19 THE COURT: My name is John Stuard.
20 I'll be the presiding Judge on the case that has
21 been set for today. You have all been summoned in.
22 This is a larger panel than we usually have.

1 Ordinarily, there will be 30, 40 people called in
2 on an ordinary case. You have been summoned in on
3 the case of the State of Ohio versus Donna M.
4 Roberts. This case is a case that whereby the
5 Defendant has been charged with murder, with the
6 capital sentence being a possible verdict.

7 For those of you who have served as a
8 juror in the past, you know that there are many
9 times during the course of any trial, that it seems
10 like everybody has forgotten you, like the
11 Attorneys and the Judge must be, have gone to lunch
12 or something and forgot you were here. Let me
13 assure you that is never the case. The Attorneys
14 and the Judge, all of the staff, try to take the
15 comfort of the Jury into account. You folks are
16 here at our request, you are taking time from your
17 lives. I'm sure each of you have other places and
18 other things that you would rather be doing right
19 now.

20 This country of ours is one that is based
21 on the common man and woman. We do not have a
22 judicial system that is run by elites. We were all

1 blessed by being born Americans or become citizens
2 of this great country by choice. And the Jury
3 system is an integral part of the law that we all
4 enjoy. There's no other country in the world where
5 if you were charged by the State with some crime,
6 where the State can put you in prison, or even
7 perhaps ask for your life. No other country where
8 you can call upon fellow citizens, people just like
9 yourself, to sit in judgment. That Jury is the
10 wall protecting each of us from the collective
11 power of the State. And many countries, if you are
12 charged with a crime, you are brought in secret
13 before a tribunal of a bunch of Army officers or a
14 bunch of Judges that some dictator has appointed,
15 that people haven't even elected. And your life
16 can be taken by those persons without anyone even
17 knowing about it.

18 And in this country, we have a right to a
19 public trial. The whole world has a right to see
20 how the trial is conducted. And a Defendant has
21 the right to call upon ordinary citizens, who are
22 in most part not trained in the law, have a general

1 knowledge of the law, but are not people who are
2 usually well informed in the law.

3 That is the function of the Judge during
4 the trial, to give the law necessary to those
5 ordinary citizens, so that they can make an
6 informed decision. The Jury system is one of the
7 three pillars of our system of Government.
8 Throughout our history, there has been a solid
9 third of our citizenry who have been there at times
10 of crisis and the Revolutionary War, a third of the
11 people wanted a revolution, a third didn't care,
12 and the other third wanted to remain loyal to King
13 George.

14 If you look at your voting statistics
15 throughout our history, there's been a solid third
16 of us who have voted. That is the block of people
17 that pay attention to what is happening in the
18 world and in this country. That is composed of
19 people like yourselves, because your names were
20 picked by a computer from the voter registration
21 roles. So we know one thing about all of you up
22 front and that is that you are interested citizens

1 of what is going on.

2 The other thing that we all know about
3 you at this point is that you are residents of
4 Trumbull County, Ohio. You could not be on this
5 Jury. We don't bring jurors in from another state
6 or from Cincinnati to try cases. We're all friends
7 and neighbors in a very true sense, and that goes
8 back through a long history of our Jury system
9 where at one point, the jurors were expected to
10 know the facts of the case. That no longer is
11 true.

12 The ideal juror now doesn't know much
13 about what the facts are. That is up to the
14 Prosecution to prove, what the facts are, or not
15 prove. Serving on a Jury is part of being a
16 citizen of this country. It is a legal duty and a
17 moral obligation. Enough said about all of that.

18 This case, as I said, involves the
19 Defendant named Donna M. Roberts. Before we
20 proceed any further, Mr. Bailey, would you be kind
21 enough to identify yourself and your position?

22 MR. BAILEY: Yes. Good morning,

1 ladies and gentlemen. My name is Ken Bailey. I'm
2 Assistant Prosecutor with the Trumbull County
3 Prosecutor's Office and I'm going to be joined
4 later this week by Attorney Chris Becker, who is
5 occupied in another trial. He's another Assistant
6 Prosecutor. Thank you.

7 THE COURT: Gentlemen.

8 MR. JUHASZ: Good morning. My name
9 is John Juhasz, I am a lawyer from Boardman, in
10 Mahoning County and I am one of the lawyers
11 representing Donna Roberts.

12 MR. INGRAM: My name is Jerry Ingram
13 and I am helping John here represent Donna. Donna,
14 do you want to stand, please?

15 THE COURT: Thank you, folks.
16 Mr. Becker is tied up presently. He will be here
17 later.

18 MR. BAILEY: Yes, Your Honor. He's
19 in trial.

20 THE COURT: As you all know, the
21 purpose of the Jury is to determine the facts, the
22 facts as presented by the Prosecution. The burden

1 of proof will be on the Prosecutor to prove the
2 facts that they are alleging by the burden of proof
3 known as beyond a reasonable doubt. How do we get
4 here today? Well, at some time in the past, a
5 Grand Jury considered evidence. The Grand Jury is
6 a group of people usually nine people just like
7 yourself, some of you may have sat on a Grand Jury
8 in the past. The State presents evidence, it is a
9 one side presentation. Very seldom does the
10 Defendant or representative of the Defendant
11 testify before a Grand Jury. That isn't the
12 function of it, because the only thing that a Grand
13 Jury does is listen to the evidence that is
14 presented, and they have to make a return of an
15 indictment or they decide not to return an
16 indictment.

17 And the test that they use is what -- is
18 there probable cause to think the accused might be
19 guilty of the crime? That is what the Grand Jury
20 does. They find probable cause to think the
21 Defendant may be guilty. The Petit Jury, which
22 this Jury will be, is called upon to determine the

1 guilt or innocence of the Defendant. An indictment
2 was returned in this case against Donna Roberts by
3 that Grand Jury, wherein she was charged with
4 aggravated murder with specifications of
5 aggravating circumstances.

6 There was a second count that was exactly
7 as I read. There was only -- there was one death
8 here. I'll explain to you how there can be two
9 murder counts at the proper time. There was a
10 third count of aggravated burglary with a firearms
11 specification. A fourth count of aggravated
12 robbery with a firearms specification.

13 Now to these charges, at a time before
14 today, Donna Roberts has entered a plea of not
15 guilty. That puts all issues before this Jury for
16 decision and this Jury will be called upon to
17 decide the guilt or the innocence of the Defendant,
18 based upon the presentation of the evidence by the
19 State. There's no duty or requirement of any
20 Defendant at any trial to take the stand. Each of
21 us have the right to remain silent. It is a
22 Constitutional right.

1 And as we start into this case, as in any
2 case, there's a presumption of innocence. Any
3 Defendant who walks into a Court of law, as is
4 often said is clothed in a cloak of innocence and
5 that cloak remains unless and until the Prosecution
6 removes the presumption by showing beyond a
7 reasonable doubt the guilt of the Defendant.

8 Now in Ohio at the present time, if a
9 person is found guilty beyond a reasonable doubt of
10 the crime of aggravated murder and guilty beyond a
11 reasonable doubt of an attached specification, the
12 law provides for the possibility of the death
13 penalty being imposed. You as prospective jurors,
14 we go through a process here of picking a Jury of
15 12 with four alternates. Those chosen as a Jury
16 will be called upon to sit during the trial, and
17 determine whether they are going to make a finding
18 of guilty or not guilty on the charges that have
19 been levied against Miss Roberts. No one knows
20 what that decision will be at this point in time.
21 Nobody has heard evidence.

22 If that Jury made a finding of not

1 guilty, that would be the end of the trial. If
2 that Jury, however, makes a finding of guilty, then
3 the same Jury will be called upon to go through a
4 second trial, a second part of the trial. At that
5 time, the burden would be upon the State of Ohio to
6 present aggravating circumstances and the Defense
7 has an opportunity to present what is known as
8 mitigating factors.

9 As an example, mitigating factor, if you
10 have an 18 year old person, the youth could be
11 taken as a mitigating factor. If the State
12 convinces that Jury that the aggravating
13 circumstances outweigh any mitigating factors
14 presented beyond a reasonable doubt, then that Jury
15 has to make the decision of whether they will
16 impose the death penalty. If the State fails to
17 carry that burden of proof, then the Jury has the
18 opportunity and the duty to consider life in prison
19 without chance of parole, life in prison with no
20 chance of parole before 30 years, and life in
21 prison without chance of parole before 20 years.

22 MR. INGRAM: Judge, it is 25.

1 THE COURT: I'm sorry. They changed
2 it. It is 25 years. The Jury is called upon in
3 that second phase to make a recommendation. The
4 Court is required to independently review that
5 recommendation. The Court is required as part of
6 the duties of the Court, if it is determined that
7 the Jury had sufficient evidence and that the
8 aggravating circumstances outweighed the mitigating
9 factors, to certify that recommendation. If the
10 Court would find that the Jury did not have
11 sufficient presentation of aggravating
12 circumstances outweighing the mitigating factors,
13 the Court would have the power to vary that
14 recommendation. The Court can never place a higher
15 penalty than the Jury has found and can only
16 reduce, and I have to advise you that since we have
17 had this law in Ohio in the eighties, there have
18 only been a handful of times when any Judge has
19 changed the recommendation of the Jury.

20 The trial of this case being as serious
21 as it is, I can think of no possible trial on any
22 subject that is more serious than a capital murder

1 case. That will involve a longer period of time
2 than the average case would take. I think that it
3 is not unreasonable to say that you can look at two
4 to three weeks as a reasonable time. Could take
5 longer, could take less time. I mention this
6 because part of the reason you are here is to find
7 out reasons why some of you will not be able to
8 participate.

9 Many of you will have legitimate reasons
10 why you should not be required to be here. We'll
11 listen to those at the proper time. There are
12 others of you who are able and willing and have no
13 problem with sitting on a Jury of this type. Those
14 are the ones we're looking for. We have no idea
15 which of you qualify at this point. So that will
16 take over the next week or so some time where we'll
17 call each of you in individually, and probably take
18 15 minutes to a half hour asking you various
19 questions. Both sides will have an opportunity.
20 I'll have an opportunity to go through whether you
21 are going to be comfortable and able to sit on a
22 Jury of this type.

1 The last point on what will happen here.
2 Depending on what this Jury decides, if that, if
3 the Jury should go into that second phase, and
4 again, none of us know at this point what the
5 future holds, but if that should occur, the Jury
6 will be sequestered. Some of you have heard that
7 word and some of you may not, but you will probably
8 have a good idea what it is. That means that the
9 Jury and the alternates, during the time that the
10 case is given to them for deliberation, until they
11 arrive at a verdict, will be kept over here at the
12 Park Hotel during the evenings. So, the jurors are
13 required to bring whatever is necessary that they
14 need. Families can bring things down. There will
15 be a deputy with them, if you have forgotten
16 something. We have had no problem with getting
17 everything you need. That is something to
18 consider.

19 There are some people who have health
20 problems where that would pretty much not be
21 possible that they could participate. Let me ask a
22 few questions here and I want you to raise your

1 hand if you have a specific answer to the question.
2 By doing that, those who raise their hand will be
3 kept here. The ones that haven't raised their
4 hands to any of these questions, we'll send home
5 for the day, and the ones who have raised their
6 hands, we have to go through each of you to find
7 out whether you are going to be excused or not at
8 this point.

9 Does anyone have plans to be away from
10 the county during the next 30 days? Any of you
11 have a planned vacation during that time period?
12 Remember who you are. You have raised your hand.
13 Does anyone have any illness in the family at the
14 present time or personal problem of some nature
15 that would require that you could not be here? Are
16 there any of you in an employment situation of such
17 a nature that to be away for a period of time that
18 I have mentioned would be an economic burden or
19 cause some other problem? The way we're going,
20 folks, we're not going to have a Jury here. Anyone
21 have a doctor's appointment or plans to enter a
22 hospital during the next 30 days? Those can

1 usually be worked around. Does anyone else have
2 any very important reason why they can be not be
3 available during this time period? Do any of you
4 have a problem with working? We usually start at
5 9:00 in the morning and go until 4:30.

6 Occasionally, one side or the other has a
7 witness on that can't appear the next day. We may
8 go until 5:00. Usually don't go longer than that.
9 Any of you with young children that have to be
10 there to pick them up at school or anything of that
11 nature? Sometimes you can work things out for
12 that. We'll discuss that with you. We take an
13 hour for lunch. Anyone have a medical problem with
14 sitting for that period of time? Usually an hour
15 and a half at a time. An hour and a half and a ten
16 or 15 minute break. Usually end at 4:30.

17 I have a rule for all of you women also,
18 that your husbands are to have supper ready for you
19 when you get home. You both have a list of
20 potential witnesses that you could read off for
21 these folks. Do you have those with you?

22 MR. BAILEY: I don't have that

1 today.

2 THE COURT: This case, as any case
3 of this nature has been given attention by the
4 local news organization. That is what the news
5 does. They tell us about things that are happening
6 in our community. Part of a fair trial for any
7 Defendant is to have a Jury that decides the case
8 on the evidence presented in Court. The case
9 should not be tried in the newspapers or on T.V.

10 One of the things that goes with people
11 in that third that I am talking about such as
12 yourselves is that you are better informed than the
13 average two-thirds. You vote, you usually read the
14 newspapers. You usually watch T.V. You are
15 interested in the world around you. And because of
16 the type of people that you are, you may well have
17 read something about this case in the paper and
18 that is fine.

19 But there are two sides to this case and
20 the one thing that applies to both sides is they
21 deserve a fair trial. If someone has read
22 newspaper accounts and watched something on T.V.

1 and they have their mind made up that one side or
2 the other is correct, then somebody isn't going to
3 get a fair trial. So the ideal juror -- Mark Twain
4 had a quote about an ideal juror, "It is somebody
5 that doesn't know very much and doesn't read
6 newspapers." Well, he was being facetious, but in
7 a way that is what the attorneys look at as an
8 ideal juror, at least on the later point and that
9 is somebody who doesn't have any idea what this
10 case is about, blank mind as far as the facts.
11 Because that requires the State to prove their case
12 the way it is supposed to be proven beyond a
13 reasonable doubt, and any decision is based
14 strictly on what happens in the Courtroom.

15 You are not going to -- we're not going
16 to get 12 jurors that are going to have blank minds
17 and that is okay. The important thing that each of
18 you have to be able to do is look within your
19 yourself when you're asked these various questions.

20 And the process we go through is called
21 Voir Dire. It comes from a French term from the
22 1600 Common Law Courts of England. And it means

1 translated, to speak the truth. There's no right
2 or wrong answer you can give on Voir Dire. The
3 only proper answer is a truthful answer.

4 You have to look, I think, at the entire
5 procedure in this manner. If I were the person
6 sitting up in that defense chair, I would want
7 someone like myself sitting in judgment. If you
8 found that you were called into an ordinary
9 criminal trial where someone was accused of
10 breaking into someone else's home, some of you have
11 had that experience. Very traumatic. A sense of
12 violation that is hard to explain. Someone broke
13 into your home and went through your personal
14 items. You are called to sit in judgment on
15 somebody who is accused of breaking into somebody's
16 home. Some of us would be totally incapable of
17 sitting on such a trial because we could not
18 divorce our own experience from what you know you
19 are going to hear in this trial. Nothing wrong
20 with that. When asked, the proper and truthful
21 answer is, "I'm sorry, I had a personal experience
22 and I could not be fair in this matter." Others of

1 us could sit on such a trial and very easily say to
2 ourselves, "My case had nothing to do with this. I
3 can sit and decide this matter on the merits of the
4 case." It is just a difference in people.

5 So, part of the questions will be geared
6 towards, do you have anything in your make up. We
7 all have our individual life experiences. We're
8 all unique in the eyes of you know who. That is
9 part of the value of the Jury. You have the
10 collective common sense of the community of
11 Trumbull County, and you have the individual life
12 experiences of each individual juror, and you put
13 that into a Jury room, and I am always amazed at
14 what you come up with. Usually works pretty much
15 on the money. But you have to have 12 people going
16 in that are fair, unbiased, unprejudiced, and have
17 no preconceived ideas or beliefs about what the
18 evidence is going to show. That doesn't sound like
19 too much to ask, does it? It is difficult to get
20 people who could be fair and impartial.

21 The reason I go into all of this, part of
22 the questioning will be what you have read, what do

1 you know about the case or you think you know about
2 the case from the newspapers. And I have to say,
3 we all know that news information is often times
4 very incorrect. We'll see it with the war going on
5 over in Iraq right now. You get an initial news
6 release and then you find out two or three days
7 later, that isn't what happened at all. Well, the
8 same thing happens locally. Reporters try to be
9 factually correct, but they are only going on what
10 somebody told them. And many people have different
11 reasons to tell the press things.

12 You folks have to decide this case on the
13 merit or lack of merits of the Prosecution's
14 presentation. That is the fair thing to do. And
15 that is the only thing that Mr. Bailey and these
16 gentlemen are asking you to do is to be fair to
17 both sides.

18 How many of you have read something about
19 this particular case or seen something on T.V.?
20 That seems to be -- there's another thing that
21 happens. A lot of times you will read something as
22 the daily paper comes out and I have had this

1 happen and it will happen in this case. Many of
2 you will find as you go through this -- you didn't
3 hold your hands up. When we start talking to you
4 individually, I'm sure some of you are going to
5 find you do have a recollection of having read
6 something. It is going to happen. That is fine.
7 Really that makes these folks probably more
8 comfortable, because whatever you read wasn't that
9 important that you placed much emphasis on it.
10 Others of you will have followed the case closely,
11 I'm sure.

12 That doesn't necessarily disqualify you.
13 You have to answer the questions for yourself. Can
14 I be fair to both sides? And we're pretty much
15 stuck with your answer on that. We can't look
16 within your minds. You are all called upon to
17 speak the truth.

18 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
19 HEARING)

20 THE COURT: Do any of you folks know
21 Mr. Bailey, Mr. Juhasz, Mr. Ingram? All three of
22 these gentlemen have been through many trials and

1 they are well known in the area, and it wouldn't be
2 unusual if any of you knew them. I'm going to read
3 through one other thing. I have covered some of
4 these points, so I apologize for any repetition, so
5 we get this all done properly.

6 As I said, the process we're about to
7 begin is called the Voir Dire. The attorneys for
8 the State and the Defendant will ask you questions
9 regarding your qualifications to serve on this
10 Jury. You should understand that although it is
11 your duty as a citizen to serve on Juries, it is
12 also your duty as a citizen not to serve if there's
13 any reason whatsoever why you cannot do so in
14 fairness to the State, to the Defendant, or to
15 yourself. What is important is that you are as
16 honest as you can be in your response to the
17 questions that will be put to you by the Court and
18 the attorneys. You are not here to be judged and
19 you will not be judged. It should not be an
20 embarrassment to you in any way if you are excused
21 from this case. I'm sure many of you will be.
22 That happens in every case. That does not mean

1 that you could not serve on some future Jury. If
2 you are excused, it will mean that you have been
3 honest and forthright. And that is all we're
4 asking you to do.

5 I said this case is that brought against
6 Donna M. Roberts. She's charged with aggravated
7 murder with a specification. As in such a case,
8 one possible penalty is the death penalty. Because
9 of that possibility, it is necessary that counsel
10 ask you certain questions about your views
11 regarding the death penalty.

12 The death penalty is an issue about which
13 people have various and sundry opinions. Some
14 favor it. Some oppose it. And there are arguments
15 for either position. You will be asked your
16 opinion and we urge you to be as candid and honest
17 as you can be in your answer. Can't give a right
18 or wrong answer. It is your opinion.

19 Now the questions the lawyers will be
20 asking are asked in every case of aggravated murder
21 with specifications. The law requires that such
22 questions be asked. And the inquiry has no

1 relationship whatsoever to whether or not Donna M.
2 Roberts is guilty or not guilty of the offense
3 charged. As Miss Roberts sits before you, she's
4 presumed innocent. And the State must prove that
5 if it is able to do so, her guilt beyond a
6 reasonable doubt.

7 Now because we only have the opportunity
8 of questioning you regarding your feelings about
9 the death penalty at this stage of the trial,
10 before the State produces any evidence about
11 whether or not the Defendant is guilty or not, I
12 must caution you that you should not conclude that
13 just because the attorneys are asking you questions
14 about a possible death penalty, that Donna Roberts
15 is guilty. It is simply part of the Jury selection
16 process that occurs in every case. Does every one
17 understand that? Does anyone have any questions
18 about what I have read at this point?

19 As I have said before, this is a capital
20 case. This is a case where the death penalty and
21 life imprisonment are potentially sentencing
22 options. There are common misconceptions as to the

1 procedure in such a case, and this preliminary
2 instruction is designed to help eliminate any
3 misconceptions you may hold.

4 The trial of a capital case may be, but
5 it is not necessarily a two stage process. The
6 issue in the first phase of this trial is the same
7 as in any other criminal case, that is to determine
8 whether Donna M. Roberts is guilty or is not
9 guilty.

10 In the event the State satisfies you
11 beyond a reasonable doubt, by that burden of proof
12 of the Defendant's guilt on either charge of
13 aggravated murder, and her guilt on the
14 specification that the aggravated murder was
15 committed during the course of an aggravated
16 robbery or aggravated burglary, then the case would
17 go to a second phase. If the case does not proceed
18 to a second phase -- I'm sorry. If that case does
19 proceed to a second phase, then the Jury would be
20 called upon to determine the appropriate
21 punishment.

22 At that time, you will be called upon to

1 determine which of four sentencing alternatives
2 should be imposed. The sentencing alternatives are
3 death by lethal injection, life imprisonment
4 without any opportunity for parole, life
5 imprisonment with parole eligibility only after
6 serving 30 full years, and life imprisonment with
7 parole eligibility only after serving 25 full
8 years. There's a common misconception that upon a
9 finding of guilty on a charge of aggravated murder
10 with a death specification, that the Jury must
11 sentence to death. That simply is not so. As I
12 have stated repeatedly, the death penalty is only
13 one of four possible penalties that the Jury is
14 called upon to compose. And the Jury must fairly
15 consider following the instructions of the Court,
16 life imprisonment as well as a death penalty.

17 If this case does proceed to a second
18 phase, you should enter that second phase with an
19 open mind, not favoring the imposition of one
20 penalty over another.

21 Now if you do have to decide upon a
22 sentence, your decision will not be made in a

1 vacuum. At that time, I would instruct you to
2 weigh the balance of the law that is called
3 aggravating circumstances, that is, the facts which
4 the State claims justifies imposition of the death
5 penalty against certain mitigating factors. Those
6 are positive things brought out about the
7 Defendant. At that time, I would more fully
8 describe what is meant by aggravating circumstances
9 and mitigating factors.

10 You would further be instructed that the
11 burden would be upon the Prosecuting Attorney to
12 prove to you beyond a reasonable doubt, that the
13 aggravating circumstances outweigh the mitigating
14 factors, and that death is the appropriate
15 sentence. Only if the Prosecutor were to meet the
16 burden of proof and firmly convince you that the
17 aggravating circumstances outweigh the mitigating
18 factors, would the law require a verdict of death
19 by lethal injection.

20 On the other hand, if the Prosecutor does
21 not convince you that the aggravating circumstances
22 outweigh the mitigating factors beyond a reasonable

1 doubt, the law would require imposition of one of
2 the life sentence options. Each of the sentencing
3 options is entitled to equal consideration in the
4 event this case proceeds to a second phase. And a
5 juror should not automatically favor imposition of
6 one sentence over another.

7 Let me caution you once again that
8 neither the preliminary instructions on procedure
9 in a criminal capital case, nor the questions of
10 the Court regarding your views on capital
11 punishment has any bearing on the guilt or
12 innocence of the Defendant. Donna M. Roberts is
13 presumed innocent and you must test the evidence
14 presented by the State in this case, just as you
15 would in any other case.

16 Is there anyone who could not fairly
17 consider either the death penalty or life
18 imprisonment as a sentencing option? We'll handle
19 that on the individual Voir Dire.

20 Now this is most important what I'm going
21 to advise you at this point. And that is, you are
22 all under an instruction from this point on, not to

1 discuss anything about this case among yourselves
2 or with anyone else. You are not to read anything
3 that appears in the newspapers or watch anything
4 that occurs that might occur on T.V. And I'm sure
5 again, due to the nature of this case, there will
6 be coverage by the press. Something wrong if there
7 wasn't. You are not to partake of that. If you
8 have as you sit here that you wish to be a juror in
9 this case, don't put yourself through listening to
10 the news accounts because you are not permitted to
11 do that. You have to decide this case fairly on
12 the evidence presented in Court and the evidence by
13 both sides. Both sides will be given an
14 opportunity to present their evidence fairly.

15 Now I have given this instruction on
16 other capital cases and we have had one that ended
17 up having to be sent to another county, because
18 many of the jurors did not regard the instruction
19 as important. It cost all of us as taxpayers a
20 considerable amount of extra money.

21 You should not permit anyone to talk with
22 you about it. If you are on this panel and

1 particularly if you are chosen on this Jury, anyone
2 who finds that you are on this type of a case, it
3 happens in an ordinary run of the mill criminal
4 case, if somebody finds you are on a Jury, they are
5 going to be asking you questions. Most people
6 never get an opportunity to sit on a Jury. Many
7 people would like to. So it will bring up interest
8 from your family and your friends. "Tell me what
9 happened. Boy, I would like to get on a Jury
10 sometime." And it is a very human response to want
11 to talk about it. If you do so, you are violating
12 your oath and you are not permitted to do that.
13 You have to remain that blank slate from this point
14 on, as much as possible.

15 It is up to these folks to fill the
16 picture in as to what the eventual decision will
17 be. That is most important. That is what each of
18 you would want if you were a Defendant in a case.

19 Folks, I'm going to ask all prospective
20 jurors to stand and be sworn in this matter, if you
21 will. Sworn or affirmed.

22 BAILIFF: Do each of you swear that

1 you will truthfully answer the questions put to you
2 by this Court and by counsel of record in this
3 case, touching upon your qualifications to act as
4 jurors?

5 (All answered "I do.")

6 THE COURT: Now I'm going to excuse
7 those who did not hold their hand up and ask
8 everyone to stop downstairs at the Jury
9 Commissioner's Office. There is a form that will
10 be given to you. Please complete that form and
11 bring it back when you are notified to return.
12 That is an information sheet, which will help the
13 attorneys in the questions they are about to put.
14 Please read the media form and sign that, too.

15 When you call in, your communication with
16 the Court will be through a Jury Commissioner
17 Office by calling that number you were given or
18 will be given. You all will be on Panel S. They
19 are having problems with the phone down there, of
20 all times. I assume we'll get that fixed. If you
21 did not raise your hand, then I'm going to excuse
22 those folks momentarily. The rest will have to

1 remain and we have to go through each of the
2 reasons why you cannot serve as a juror.

3 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
4 HEARING)

5 THE COURT: One more time, those of
6 you who are excused, please don't forget to stop
7 down at this lady's office on the second floor. No
8 newspaper or talking about the case. Keep your own
9 counsel until we get through this process of where
10 we're at on this Jury. Call in tomorrow night,
11 Panel S. That will tell you when to appear.

12 What will happen from this point is, as
13 of Thursday, we'll have the first ten on the list.
14 You were all given a number. We have to go by
15 those numbers, so you will be called probably ten
16 each day from Thursday on.

17 We go through this individual Voir Dire
18 process, and each of you will be asked various
19 questions, and I ask all of you not to be
20 apprehensive about that. You will find that
21 this -- there are no questions that we put to you
22 that will cause you embarrassment. You must have

1 some apprehension, if you have never been through
2 this. I ask you to put that aside. If there's any
3 reason at all why you legitimately cannot or do not
4 wish to serve on this Jury, you have an opportunity
5 to express that, and we'll accept your decision in
6 that matter. But just don't be afraid about the
7 whole process. I know it is probably intimidating
8 to some of you. It shouldn't be. This is your
9 Court as much as ours.

10 Call in tomorrow night that number, you
11 will be given further instructions. All who did
12 not raise their hand are free to go at this time.
13 Stop downstairs.

14 (Court in recess at 10:50 A.M.)

15 (Jury room at 11:15 A.M.)

16 THE COURT: For the record, the
17 questionnaire that will be presented to the
18 prospective jurors today has been agreed upon by
19 both sides after reviewing it.

20 MR. BAILEY: Yes.

21 MR. INGRAM: That is correct.

22 (Juror No. 1, Albert Depto, entered the Jury room.)

1 THE COURT: You are Albert Depto?

2 MR. DEPTO: Yes, Sir.

3 THE COURT: Good morning. You held
4 your hand up when I went through the various
5 things. What was the reason?

6 MR. DEPTO: For number two, my
7 wife's got scleroderma. I take care of her, and my
8 mother is in a nursing home and I go there once a
9 day to feed her at noontime.

10 THE COURT: I'm sorry to here about
11 your problems.

12 MR. DEPTO: I serve daily mass the
13 third week of the month and I serve for funerals.

14 THE COURT: Any objection to
15 dismissing for cause?

16 MR. BAILEY: No.

17 MR. JUHASZ: No, Sir.

18 THE COURT: You have a right to ask
19 questions if you want.

20 MR. JUHASZ: No, Sir.

21 (Patricia Molendyke, Juror No. 13 entered the
22 Jury room.)

1 THE COURT: Miss Molendyke, you held
2 your hand up when I asked various questions. What
3 was the reason for that?

4 MS. MOLENDYKE: I'm self employed.
5 I work for myself, and right now, I'm not very
6 busy, but I never know when I might become busy.

7 THE COURT: What type of business do
8 you have?

9 MS. MOLENDYKE: Graphic Arts.

10 THE COURT: You are waiting for
11 somebody to walk in? You never know when that will
12 happen?

13 MS. MOLENDYKE: Yes.

14 THE COURT: Mr. Bailey, any
15 questions you wish to ask?

16 MR. BAILEY: Would you be able to
17 survive missing maybe three weeks of work?

18 MS. MOLENDYKE: I think that is kind
19 of hard to do because I wouldn't be making any
20 money at all.

21 MR. BAILEY: Is that your only
22 source of income?

1 MS. MOLENDYKE: Yes. My husband.

2 MR. BAILEY: Your husband works with
3 you?

4 MS. MOLENDYKE: No. He works for
5 Kent State.

6 MR. BAILEY: Would you be able to
7 survive on his income for three weeks?

8 MS. MOLENDYKE: I suppose.

9 MR. BAILEY: You are the only one
10 who knows whether it would be an extreme economic
11 hardship on you, because the trial itself will take
12 maybe two weeks and if we go into a second phase,
13 that could take maybe another part of a week.

14 MS. MOLENDYKE: When does it start?

15 THE COURT: We don't know that. It
16 could be within the next two weeks, any time within
17 the next two weeks probably. Then it would be two
18 weeks and then depending, it could be another few
19 days. Here's the thing, this is what it all boils
20 down to. Sometimes you have a person that is self
21 employed and they are wanting to serve on a Jury,
22 and they are willing to give up whatever income

1 they are going to lose. What I don't wish to have
2 and I'm sure neither side here is a juror, who is
3 sitting there worried about their loss of income
4 and that could very easily happen. I have no idea
5 nor do these folks, what your situation is. You
6 are the one that pretty much has to decide whether
7 you are willing to serve as a juror when you are
8 losing your income.

9 MS. MOLENDYKE: I don't think I
10 would want to do that. I don't want to pass up
11 jobs. It has been very slow to begin with right
12 now. If I get a job that comes in, I want to take
13 it.

14 THE COURT: Do you think that would
15 be on your mind?

16 MS. MOLENDYKE: Yes.

17 THE COURT: Any questions?

18 MR. INGRAM: As I understand and
19 maybe I'm a little bit off base here, but are you
20 sort of a one person operation?

21 MS. MOLENDYKE: Yes.

22 MR. INGRAM: If we were to take you

1 away from your business for two weeks, not only
2 would you lose income, but you would potentially
3 lose your customers; is that what you are telling
4 us?

5 MS. MOLENDYKE: Yes.

6 MR. INGRAM: It is the loss of the
7 customers that would cause you consternation?

8 MS. MOLENDYKE: Yes, Sir.

9 MR. INGRAM: Thank you. I'm
10 satisfied.

11 MR. BAILEY: We're satisfied.

12 THE COURT: Thank you for your time.
13 You are excused.

14 (Donna Metz, Juror No. 16, entered the Jury room.)

15 THE COURT: You raised your hand.
16 What was that about?

17 MS. METZ: I don't feel -- I have a
18 job that requires -- like they schedule you say on
19 Friday, and like, for instance you know like they
20 said, how long would you have to be there. Well, I
21 had to tell them, I don't know. It is not like a
22 scheduled time that I can --

1 THE COURT: It is the uncertainty of
2 it?

3 MS. METZ: Right. They pay, but if
4 it is longer than four weeks, they don't. If it
5 would be longer than that.

6 THE COURT: It will not be longer
7 than four weeks. It may take four weeks of time,
8 but you won't be here all that four weeks.

9 MS. METZ: They don't know how to
10 schedule my schedule.

11 THE COURT: You can't call them up
12 tomorrow and say, "I'll be at work tomorrow"?

13 MS. METZ: Exactly, because there's
14 so many people that can work at one time and we
15 don't have that many people. We're short right
16 now. They don't schedule you day to day. It has
17 to be a weekly thing. I have to work because I got
18 one in medical college and one getting married next
19 year, so it is kind of tough. We have to save for
20 that.

21 MR. BAILEY: You would get some
22 advance notice before we would start the actual

1 trial. We would question you for one day, not the
2 whole day, but for a part of the time, and then
3 sometime after that probably in about two weeks, we
4 probably start the trial. And then the trial may
5 take two weeks straight, and then there may be a
6 break, depending on what happens, whether or not we
7 go into a second phase. That may take part of a
8 week. So, you would probably be dealing with maybe
9 two and a half to three weeks at the most. You
10 would have some advance notice there, and they
11 would have some advance notice to schedule somebody
12 for you. Would that be okay?

13 MS. METZ: Yes, probably, but I'm
14 not really happy about trying to convict somebody,
15 either. I'm not comfortable with it.

16 MR. BAILEY: Nobody would be, but it
17 is an obligation that we have to make sure our
18 system works, but your major problem at this point
19 is scheduling at work?

20 MS. METZ: Yes.

21 MR. BAILEY: You think that would be
22 able to be overcome?

1 MS. METZ: It is pretty difficult.
2 It is difficult.

3 MR. BAILEY: You indicated you have
4 economic hardship if you are not able to work. Are
5 you saying you think they wouldn't schedule you and
6 you would actually lose work?

7 MS. METZ: I am already this week
8 because of this.

9 MR. BAILEY: And that concern about
10 economic hardship, would that affect you so that
11 you wouldn't be able to concentrate on what is
12 going on here?

13 MS. METZ: I don't know if it would
14 affect me that much. It would affect my income
15 with having to pay a college tuition of \$2300 every
16 other month.

17 MR. BAILEY: You are saying that
18 that would cause severe economic hardship on your
19 family?

20 MS. METZ: Yes, it would in that
21 respect. It is very expensive right now. She's
22 got like almost a half year to go yet. It is

1 pretty tough right now.

2 THE COURT: I imagine. You folks
3 have any questions?

4 MR. INGRAM: If I may. Wherever you
5 work, your work for the following week is scheduled
6 on Friday of the preceding week?

7 MS. METZ: Right.

8 MR. INGRAM: You are already off for
9 all of this week?

10 MS. METZ: I'm not off all this
11 week, no. They gave me off like two days, which if
12 I don't come tomorrow, then I don't get paid for
13 tomorrow, and then they scheduled me late in the
14 day after that, only thinking that I would be done
15 by then. That would mean that if I would have to
16 be here all day, then I have to go directly from
17 here to there and work the rest of the day. We
18 work in an office with just a few people and it is
19 customer service.

20 MR. INGRAM: If you are on Jury
21 duty, they actually expect you to go to work?

22 MS. METZ: Yes, they do.

1 MR. INGRAM: That would be a
2 hardship to me.

3 MS. METZ: They expect at least a
4 few hours of work even if you are on Jury duty.

5 MR. BAILEY: We have no problem
6 excusing her.

7 MR. JUHASZ: No objection.

8 THE COURT: Number 16 is excused
9 then for cause. You are done with everything here.
10 (Juror No. 366, Vicki Martin entered the Jury room.)

11 THE COURT: You held your hand up?

12 MS. MARTIN: I moved to Mahoning
13 County a week ago, but my voting record is in
14 Trumbull County, but I lived in Trumbull County my
15 whole life. I want to do this, but I feel I would
16 be an excellent juror and be fair and unbiased, and
17 I understand the importance of Jury duty.

18 THE COURT: We appreciate that. It
19 raises an interesting question. I think you
20 must -- you have moved to Mahoning County?

21 MS. MARTIN: One week ago.

22 THE COURT: With the intention of

1 staying there?

2 MS. MARTIN: Yes. When I was
3 summoned, I was in Trumbull County where I had been
4 living.

5 THE COURT: Do you have any
6 different views?

7 MR. BAILEY: No.

8 MR. JUHASZ: I think it is a legal
9 requirement that she live here.

10 (Juror No. 23, Aaron Florek entered the Jury room.)

11 THE COURT: Why did you have your
12 hand up?

13 MR. FLOREK: I'm moving to Florida
14 for school.

15 THE COURT: You are not going on
16 Spring break?

17 MR. FLOREK: No.

18 THE COURT: You are leaving -- what
19 is the date?

20 MR. FLOREK: April 27. Between then
21 and May 3. We're not sure what date exactly.

22 THE COURT: That could end up right

1 in the middle here.

2 MR. BAILEY: I believe it will. We
3 have no problem with excusing him.

4 MR. JUHASZ: Neither do we.

5 THE COURT: You are excused for
6 cause. You are done with any further
7 responsibilities.

8 (Juror No. 30 Shawn Woods entered the Jury room.)

9 THE COURT: Your held your hand up.
10 What was that about?

11 MS. WOODS: I had seen about it on
12 the news and read it in the paper. I honestly
13 don't remember what I read, but I know I have seen
14 it in the paper or on the news, but I do have a
15 question for you. When we were filling out our
16 papers before, I don't know if I -- I wasn't
17 personally involved, but you had ruled on my one
18 Aunt's case, and you are doing my sister's civil
19 case right now. I don't know if that has any
20 bearing on anything.

21 THE COURT: What case is that?

22 MS. WOODS: The first one was

1 Annalee versus Rota, and my sister is Schmidt
2 versus Burns.

3 THE COURT: I don't remember each of
4 those. Was there something that happened? Please
5 answer very truthfully.

6 MS. WOODS: My Aunt's case was a
7 very long running case. I think it is the longest
8 running case on record for Trumbull County. I felt
9 you could have gotten it settled sooner than it
10 was.

11 THE COURT: What type of case was
12 it?

13 MS. WOODS: Her partner was paying
14 my Uncle back and my Uncle passed away and they
15 stopped making payments and my Aunt took them to
16 Court. She said if there was an understanding that
17 my Uncle and she didn't have to pay back.

18 THE COURT: I remember that. There
19 was a dispute about the money she had already taken
20 out of the estate and what she was entitled to. I
21 don't recall that being an unduly long case. It
22 wasn't the longest case we had.

1 MS. WOODS: I wasn't personally
2 involved with it.

3 THE COURT: I think if you would
4 check what happened in that case, you may have got
5 a different view of maybe their opinion of what
6 happened than what happened. You gentlemen can
7 inquire.

8 MR. BAILEY: You are just concerned
9 that you had seen it on -- something on television?

10 MS. WOODS: I just had seen it. I
11 didn't really think about it a whole lot. I had
12 seen it on T.V. about Miss Roberts.

13 MR. BAILEY: Okay. We'll cover that
14 at a later time. The other thing with the Judge,
15 there's nothing about those cases that would affect
16 this case.

17 MS. WOODS: I wasn't personally
18 involved.

19 MR. BAILEY: Other than that, you
20 are able to serve?

21 MS. WOODS: Well, to tell you the
22 truth, in my heart, I don't think I have the right

1 to judge whether someone should ever die.

2 MR. BAILEY: We'll get into that,
3 too, at a later time.

4 MS. WOODS: I might have a problem
5 with that, if it comes right down to it.

6 MR. BAILEY: You are able to be here
7 during the time?

8 MS. WOODS: Yes, I am.

9 MR. INGRAM: Nothing at this time
10 from the Defense.

11 THE COURT: Miss Woods, just so
12 there's no question on this, even if you have the
13 view that the Judge at some point in the past
14 hasn't done something that your Uncle at least
15 thought was not done in a timely manner, that would
16 not affect your ability to sit on this case and
17 decide it fairly for both sides, would it?

18 MS. WOODS: I honestly don't know if
19 it would affect me.

20 THE COURT: You feel that strongly
21 about it, that it might?

22 MS. WOODS: Yes, I think I do.

1 THE COURT: That is fair enough. I
2 think that is the reason that you may not want her.

3 MR. INGRAM: I have no objection to
4 Miss Woods being excused.

5 MR. BAILEY: We have no problem
6 excusing her.

7 THE COURT: Excused for cause. We
8 thank you very much for your time.

9 (Juror No. 33, Twila Bartek entered the Jury room.)

10 THE COURT: Good morning. You are
11 Miss Bartek?

12 MS. BARTEK: Yes.

13 THE COURT: Any relation to Bea
14 Bartek?

15 MS. BARTEK: No.

16 THE COURT: I understand from
17 reading your medical excuse here that you have
18 someone in your family you care for daily.

19 MS. BARTEK: My Grandma and my Mom.
20 They both had three strokes. They can't walk or
21 talk.

22 THE COURT: That is a full time job.

1 MS. BARTEK: Very much.

2 THE COURT: Mr. Bailey, do you wish
3 to inquire?

4 MR. BAILEY: No objection.

5 MR. INGRAM: No questions.

6 THE COURT: You are excused for
7 cause. That means you are done with any further
8 proceedings here. Thank you very much.

9 (Douglas L. Jones, No. 38 entered the Jury room.)

10 THE COURT: You raised your hand.

11 MR. JONES: I strongly oppose the
12 death penalty. I just couldn't decide for that.

13 THE COURT: Okay. We usually get
14 into that part of it later, but do you have any
15 objection to me asking him a few questions here to
16 see if we can get past this?

17 MR. BAILEY: No problem.

18 MR. INGRAM: No.

19 THE COURT: Doug, you understand we
20 have the law. We're all bound to follow it. I
21 don't know of anybody that enjoys sitting on a case
22 of this nature. In fact, if anybody did enjoy it,

1 I suspect neither side here would want them to sit
2 on the case. You don't have to agree with the law
3 to be a juror in this case. The thing is, you have
4 to be able to follow the law. Now most people have
5 a fixed opinion one way or the other about the
6 death penalty. It's a controversial issue. Some
7 people in good faith could never impose the death
8 penalty under any circumstances. You have other
9 people that feel that if a murder is committed, the
10 person should forfeit their life. Neither type of
11 American can sit on a Jury. The juror that they
12 are looking for is somebody who is able to make the
13 determination first of their guilt or innocence,
14 and if the Jury in their wisdom comes to the
15 conclusion of a finding of guilt, then it has to go
16 to the second phase, and the jurors in that second
17 phase have to give assurance to both sides, that
18 they are able to evaluate those aggravating
19 circumstances against the mitigating factors. And
20 even though they may not agree with the death
21 penalty, if the State proves its case in that
22 regard, they are duty bound to consider whether the

1 death penalty is the proper imposition. Now that
2 is a fine distinction I am making. But you
3 understand what I'm saying.

4 MR. JONES: I understand what you
5 are saying, yes.

6 THE COURT: And only if you could
7 never under any circumstances, impose the death
8 penalty, would that be a basis for you being
9 excused.

10 MR. JONES: Well --

11 THE COURT: If you had a mass
12 murderer that killed 15 kids and the State proved
13 it, and there were no mitigating factors that
14 outweighed the aggravating circumstances, are you
15 of such a type that you couldn't, in that case,
16 consider a death penalty?

17 MR. JONES: I think we have to be
18 better than that. I can't say I would never say
19 never.

20 THE COURT: You are saying under
21 some circumstances, you could visualize it?

22 MR. JONES: I don't see the

1 circumstances, but --

2 THE COURT: Realize you don't know
3 anything about this case yet.

4 MR. JONES: No, I don't.

5 THE COURT: Mr. Bailey, do you wish
6 to ask any questions?

7 MR. BAILEY: Not at this time.
8 We'll get another chance.

9 MR. INGRAM: Nothing at this time.

10 THE COURT: I'm going to -- you will
11 be in the pool. You will have an opportunity to
12 explain your position. They will have an
13 opportunity to explain their positions further.
14 Call that number and stop downstairs.

15 (Juror No. 40, Steven Bokan entered the Jury room.)

16 THE COURT: You held your hand up.
17 What was that about?

18 MR. BOKAN: Basically, I'm asking
19 for dispensation because of my employment. I work
20 in Akron. I commute 50 minutes each day.
21 Secondly, I manage a team of six data base
22 administrators up there. It is an operational type

1 job. Basically, wired, I am on call 24/7, and
2 being away from work for an extended period of time
3 would be an extreme hardship for me personally. It
4 is not like that work is going to be done by
5 somebody else. There's nobody there that would
6 pick up my job and do it.

7 THE COURT: That is an enviable
8 position to be in.

9 MR. BOKAN: Not really.

10 MR. INGRAM: How about when it comes
11 time for a raise?

12 MR. BOKAN: The entire rubber
13 company is not in a position to be giving a lot of
14 raises.

15 THE COURT: Mr. Bailey, do you have
16 any questions you wish to ask?

17 MR. BAILEY: What happens with
18 vacations and sick time?

19 MR. BOKAN: Operationally it is not
20 a real problem. Again, we're talking for about two
21 to three weeks here. That is an extended period of
22 time. Over the last probably four years since I

1 have worked for Goodyear, I haven't been gone for
2 more than a week. It is just too tough for me to
3 stay away for more than a week at a time.

4 MR. INGRAM: No questions.

5 THE COURT: Okay. You are excused
6 for cause. You need not worry about anything
7 further on this.

8 (Juror No. 43, Thomas Savanyu entered the Jury room.)

9 THE COURT: You held your hand up.

10 MR. SAVANYU: It was for financial
11 reasons. They depend on me for a paycheck and plus
12 being away that long from my family, I don't think
13 it would be good for me.

14 THE COURT: You are the sole support
15 of your family?

16 MR. SAVANYU: My wife and I
17 together.

18 THE COURT: What type of job that
19 you would not get paid by your employer if you
20 missed?

21 MR. SAVANYU: I believe so, for me,
22 right now it is financial, it is hard to pay the

1 bills.

2 THE COURT: You don't get paid as
3 much, of course?

4 MR. SAVANYU: Not a whole lot.
5 We're pretty close though on our pay checks.

6 THE COURT: Mr. Bailey?

7 MR. BAILEY: You said you and your
8 wife are the sole support of your family. Just the
9 two of you?

10 MR. SAVANYU: Yes.

11 MR. BAILEY: I take it your finances
12 are such -- do you work overtime?

13 MR. SAVANYU: Not right now, no, but
14 during the holidays, I would.

15 THE COURT: Let me ask you this. Is
16 there some other reason besides the financial?

17 MR. SAVANYU: I think that and being
18 such a high profile case, it might be on my
19 conscience for a while as well, Sir.

20 THE COURT: It is that more than the
21 financial?

22 MR. SAVANYU: Pretty much, yes.

1 MR. INGRAM: I have a question. We
2 really want jurors who will keep a case on their
3 conscience. That is the best kind of juror that
4 you can ask for is one who takes their
5 responsibilities seriously. Do you think this case
6 will affect you so much that you just shouldn't be
7 asked to deal with it? That is sort of what I
8 sense.

9 MR. SAVANYU: It probably would
10 bother me for awhile, and on my conscience and I
11 don't think I have a right to pass judgment on
12 someone like that.

13 THE COURT: Let me say this to you
14 and you answer from your heart on the matter. It
15 is a rare person that is asked to do something of
16 this particular nature, that feels very comfortable
17 with it. You have to have something wrong with you
18 if you felt comfortable with it. Some of us are
19 more sensitive than others, but for a case of this
20 nature, don't you really believe that everybody who
21 decides to sit on this Jury have feelings like you
22 are expressing now to a degree?

1 MR. SAVANYU: Maybe some yes, maybe
2 other individuals, no. It is based on an
3 individual person.

4 THE COURT: Everybody is an
5 individual, no question about it. And the point
6 is, it isn't fair to the Defense if you get 12
7 people on a Jury that say, "Yes, give the death
8 penalty," without any second thought. And it isn't
9 fair to the Prosecution to have somebody that is
10 willing to consider the thing, their conscience is
11 very much involved, but will never under any
12 circumstances consider or impose the death penalty.
13 That wouldn't be fair to the Prosecution. What we
14 need are people of conscienceness, that have a
15 moral conscience that are willing to sit and
16 whatever the law requires them to do to follow the
17 law, that is a difficult thing we ask of people.

18 MR. SAVANYU: Yes, it is.

19 THE COURT: But none of us can look
20 within your mind. You are the one that has to
21 answer it, when you would be able to know the law.

22 MR. SAVANYU: I don't know. Like I

1 say, under all of the circumstances and with the
2 stress and things, it would have an effect probably
3 on me.

4 THE COURT: I take from what you are
5 saying, you are a person of great sensitivity.

6 MR. SAVANYU: Yes.

7 THE COURT: Do you have any
8 questions?

9 MR. JUHASZ: Just for a second. You
10 strike me as a sensitive person and you frankly
11 strike me as being a little stressed out right now
12 just sitting here.

13 MR. SAVANYU: A little bit.

14 MR. JUHASZ: When we try this case
15 as lawyers, I don't talk to anybody. I don't talk
16 to my wife, I don't talk to my kids. I am thinking
17 about this case. That is sort of what we ask of
18 you, but we don't want you to blow a gasket doing
19 that and am I sensing from you that you think that
20 may happen? We need you to stay objective and pay
21 attention. If you are so stressed out that you
22 can't do that as much as we want you, we don't want

1 you stroking out on us or anything, and I am
2 sensing that from you. Am I reading that
3 correctly?

4 MR. SAVANYU: Yes, Sir.

5 MR. JUHASZ: Nothing else.

6 THE COURT: Mr. Bailey?

7 MR. BAILEY: You are saying that you
8 would be so stressed just by being here, because
9 you seem pretty stressed today, that you don't
10 think you would make it through the trial?

11 MR. SAVANYU: Probably not, no.

12 MR. BAILEY: We wouldn't have a
13 problem excusing him.

14 MR. JUHASZ: No objection.

15 THE COURT: We thank you for showing
16 up and we thank you for your time. You are excused
17 from any further responsibilities.

18 (Juror No. 229, Ronald Wynn, entered the Jury room.)

19 THE COURT: Ronald, you heard the
20 questions, you held your hand up.

21 MR. WYNN: I am a diabetic and I
22 didn't know if that was important or not, because I

1 have to get a shot every day at ten and six and I
2 need to eat when I am getting my shots and I
3 haven't ate yet, that is why she told me to come in
4 now. I have to eat at ten, 12, and I don't know if
5 that was a problem for me to get up and go get
6 shots and eat.

7 THE COURT: We usually take a break
8 about ten every morning, and if need be, we could
9 stop the trial for a few minutes for you to get
10 your shot. You could make preparations for any
11 food you would have to have.

12 MR. WYNN: I could bring that with
13 me?

14 THE COURT: Yes. We have a
15 refrigerator that you can put in anything you need.
16 Is there any other reason why you could not be
17 seated here?

18 MR. WYNN: No.

19 THE COURT: Mr. Bailey?

20 MR. BAILEY: No questions.

21 MR. INGRAM: If we accommodated you
22 as best we can, you think you could live with it?

1 MR. WYNN: Yes. I didn't know that
2 long thing this morning if it meant me having to do
3 all of my blood sugar testing throughout the days
4 and evenings, if I could bring all of that stuff
5 and all of my needles and insulin.

6 THE COURT: We could provide a place
7 for you to check that. How often do you do that?

8 MR. WYNN: I am supposed to do it
9 twice a day.

10 MR. INGRAM: I don't know if the
11 deputies will let the stuff in the Court, in the
12 Courthouse.

13 THE COURT: I understand the only
14 thing it requires is the -- you would only have to
15 bring one insulin shot and your testing kit which
16 is a very small thing. And that could be put
17 somewhere. I think if I can speak for Mr. Ingram,
18 his concern is that it is going to be awful
19 inconvenient for you.

20 MR. WYNN: More or less is, because
21 I would have to lug this stuff every day and this
22 morning they wanted me to check out my needle this

1 morning when I brought it in.

2 THE COURT: All of that we could
3 handle, but you have to be comfortable with being
4 here. Now, if it arose, the situation where the
5 Jury had to be sequestered, you would be for the
6 time of the deliberation, kept together over at the
7 hotel there, back and forth. And your parents or
8 somebody could bring your insulin in to you, but
9 that should not cause you any particular problem,
10 should it?

11 MR. WYNN: No.

12 THE COURT: Any other questions?

13 MR. INGRAM: No.

14 THE COURT: We'll put you in the
15 pool, you call that number, stop downstairs and
16 pick those papers up.

17 (Juror No. 68, Michael Burzenski, entered the Jury
18 room.)

19 THE COURT: Michael, you held your
20 hand up this morning. What was that about?

21 MR. BURZENSKI: Medical.

22 THE COURT: What is your problem?

1 MR. BURZENSKI: Blood pressure.

2 THE COURT: You are on medication?

3 MR. BURZENSKI: Right.

4 THE COURT: Does that keep it
5 controlled?

6 MR. BURZENSKI: Sometimes it gets
7 out of control.

8 THE COURT: There's blood pressure
9 problems and blood pressure problems -- does it get
10 extremely high on you?

11 MR. BURZENSKI: Sometimes I have a
12 nose bleed, but recently, it has been pretty good.

13 THE COURT: That is one of those
14 things that we have a hard time gauging. It boils
15 down to whether you are comfortable or not. It is
16 a good reason if you don't want to sit on this Jury
17 to be excused.

18 MR. BURZENSKI: One day it would be
19 okay, but I suspect after I go about three or four
20 days, I would be getting into a bind.

21 THE COURT: You are having
22 continuing problems?

1 MR. BURZENSKI: Yes.

2 MR. INGRAM: No questions from the
3 Defense.

4 MR. BAILEY: No questions.

5 THE COURT: No objection to me
6 dismissing for cause?

7 MR. BAILEY: No objection.

8 MR. JUHASZ: No objection.

9 THE COURT: We thank you for coming,
10 though. You are excused.

11 (Court in recess at 12:00 noon.)

12 (Resumed in Jury room at 1:10 p.m.)

13 (Juror No. 69, Tabatha Lovejoy, entered the Jury
14 room.)

15 THE COURT: You held your hand up?

16 MS. LOVEJOY: I have four small
17 children and my Mom has cancer surgery next week
18 and I want to be there.

19 THE COURT: How young are they?

20 MS. LOVEJOY: Seven, five, four and
21 two.

22 THE COURT: 24-hour a day job.

1 MR. BAILEY: Do you have anybody
2 else who can watch your children?

3 MS. LOVEJOY: My Mom is my
4 babysitter, but she has surgery next week.

5 MR. BAILEY: How about after next
6 week?

7 MS. LOVEJOY: I guess she probably
8 could. My husband, he works. He leaves at 7:00
9 and he's home at 4:00 and the kids --

10 MR. BAILEY: Is this fairly
11 extensive surgery?

12 MS. LOVEJOY: She's having her
13 breast removed.

14 MR. BAILEY: She's not going to be
15 in any shape for awhile.

16 MS. LOVEJOY: Yes.

17 MR. BAILEY: No objection.

18 MR. INGRAM: No questions.

19 THE COURT: You are excused for
20 cause.

21 (Juror No. 74, Frank King, entered the Jury room.)

22 THE COURT: You held your hand up

1 this morning. Tell us what that is about.

2 MR. KING: To take the pledge?

3 THE COURT: No.

4 MR. KING: To be excused?

5 THE COURT: Yes.

6 MR. KING: On the 18th, I'm going to
7 Florida and I'll be down there for six days until
8 the 24th. Any time -- I think we'll be back by
9 then. Any time after that, I am okay.

10 THE COURT: I think that is going to
11 be right in the middle of probably what we're doing
12 here. You gentlemen have any questions?

13 MR. JUHASZ: No, Sir.

14 MR. BAILEY: No questions.

15 THE COURT: You are excused. You
16 have no further responsibilities with this. Have a
17 good trip.

18 (Juror No. 84, Darrell Skaggs, entered the Jury room.)

19 THE COURT: You held your hand up.

20 MR. SKAGGS: I am starting a full
21 time job. I'm a full time student. I have a two
22 year old son that my Mom is watching for me. A

1 four, five week trial would be pretty hard for me
2 to manage.

3 THE COURT: Any questions?

4 MR. INGRAM: Impossible to manage
5 seemed fairly clear. How about you, Mr. Bailey?

6 MR. BAILEY: Seems clear to me, too.

7 THE COURT: No objection?

8 MR. BAILEY: No objection.

9 MR. BECKER: No objection.

10 MR. JUHASZ: No objection.

11 (Juror No. 368, Tracie Pirigy, entered the Jury
12 room.)

13 THE COURT: You held your hand up.

14 MS. PIRIGYI: I'm in the process of
15 being diagnosed with what they think is MS and I am
16 on muscle relaxers and my bladder both, and I am
17 very uncomfortable right now. I can't sit or stand
18 very long.

19 MR. BAILEY: No objection.

20 MR. INGRAM: No objection.

21 THE COURT: You are excused. We
22 thank you for your time. Good luck to you.

1 (Juror No. 281, Joseph Natali, entered the Jury room.)

2 THE COURT: You held your hand up
3 this morning. For what reason?

4 MR. NATALI: I am on layoff status
5 from work right now, so I have to be available,
6 plus I have a three-year old son and my wife works
7 during the day, so I have to watch him. And I am a
8 part time paid fire fighter, EMT, so if I have to
9 do Jury duty, I have -- they don't pay Jury duty
10 down there, so I have to call off, which is taking
11 money out of my pocket, which puts a hardship on
12 helping to pay bills.

13 THE COURT: Mr. Bailey?

14 MR. BAILEY: No objection.

15 MR. INGRAM: None.

16 MR. JUHASZ: No questions. No
17 objection.

18 THE COURT: Joe, you are excused.
19 We thank you for your time.

20 (Juror No. 254, Kathryn Sarisky entered the Jury
21 room.)

22 THE COURT: You held your hand up?

1 MS. SARISKY: My husband is having a
2 major back surgery April 22nd at Cleveland
3 University Hospital and I know he's going to be
4 there at least two days. That is on April 22nd. I
5 have no one to take care of him. There's no one
6 else to take care of him. I don't know how long he
7 will be laid up.

8 THE COURT: It will be awhile. Any
9 objections?

10 MR. BAILEY: No objection.

11 MR. INGRAM: No objection.

12 THE COURT: You are excused. We
13 thank you for your time.

14 (Juror No. 106, William Kennedy entered the Jury
15 room.)

16 THE COURT: Mr. Kennedy, you held
17 your hand up this morning. What was the reason for
18 that?

19 MR. KENNEDY: Medical. I have had
20 surgery, back and heart this Summer, and I have to
21 go get my blood checked every month. Like
22 tomorrow, I got to go for a CAT scan.

1 THE COURT: You are having
2 continuing problems then?

3 MR. KENNEDY: Mostly check-ups.

4 THE COURT: Would it make it
5 difficult for you to sit for periods of time?

6 MR. KENNEDY: Yes. I was having
7 trouble this morning sitting on those hard benches,
8 and walking, too.

9 THE COURT: Any objections?

10 MR. INGRAM: None.

11 MR. BAILEY: No.

12 THE COURT: You are excused and we
13 thank you for your time.

14 (Juror No. 194, Ellin Grantz, entered the Jury room.)

15 THE COURT: Ms. Grantz, you held
16 your hand up this morning?

17 MS. GRANTZ: Right. I got bladder
18 problems. I can't sit long periods of time, and I
19 am miserable if I can't go. So I am miserable
20 right now.

21 THE COURT: That is an ongoing
22 thing?

1 MS. GRANTZ: Right.

2 THE COURT: Any objections?

3 MR. BAILEY: No objection.

4 MR. JUHASZ: No objection.

5 THE COURT: You are excused. We
6 thank you for your time.

7 (Juror No. 85, Shirley Biel, entered the Jury room.)

8 THE COURT: Miss Biel, you raised
9 your hand this morning?

10 MS. BIEL: Yes.

11 THE COURT: For what reason?

12 MS. BIEL: I seen something on the
13 news. That was why I raised my hand.

14 THE COURT: The question then is, do
15 you have your mind made up about the facts of the
16 case? Are you able to sit and listen to the case
17 and decide it fairly on the evidence presented?

18 MS. BIEL: I feel I would be able to
19 judge it on whatever was presented. I didn't -- at
20 the time I heard it, I didn't pay that much
21 attention to it.

22 THE COURT: I bet probably half or

1 better of the people in that room probably heard
2 some explanation, but that doesn't disqualify you
3 as long as you feel comfortable that you would be
4 able to set aside anything that you may have heard
5 or you may remember that you heard as not being the
6 evidence. The evidence has to come in the
7 Courtroom. Do you feel comfortable?

8 MS. BIEL: Could I ask a question?

9 THE COURT: Sure.

10 MS. BIEL: On the indictments that
11 came down, were there four indictments? Was there
12 one on each count?

13 THE COURT: There's four counts on
14 one indictment. There are actually two charges of
15 murder although there was only one murder done, but
16 that is a legal thing that I'll have to explain at
17 the proper time. Any questions?

18 MR. BAILEY: We'll cover this at the
19 next session. No questions at this time.

20 MR. INGRAM: Not at this time.

21 THE COURT: You will be in the pool
22 then and you should call that number. Stop

1 downstairs and get those papers before you leave.

2 Thank you.

3 I got the ruling from the Court of
4 Appeals. The Court of Appeals, Judge Nader,
5 Christley and Ford, they have, the sum and
6 substance -- I'll get a copy of it -- they don't
7 have jurisdiction. The Court of Appeals doesn't
8 have jurisdiction in murder cases. It goes
9 directly to the Supreme Court, but they went over
10 and above that, and said even if we had
11 jurisdiction, not a final appealable order, and
12 case law was cited.

13 MR. JUHASZ: Okay.

14 (Juror No. 86, Ronald Conrad, entered the Jury room.)

15 THE COURT: You held your hand up
16 this morning. What was the reason?

17 MR. CONRAD: I recently divorced and
18 my children live -- I have three children who live
19 with my ex-wife in Champion. I go out there every
20 morning and get my 11 year old and 13 year old on
21 the bus and I take my seven year old to school and
22 he starts at 8:35, and it is 8:40 before I get out

1 of there. I am the only one available in the
2 family. My oldest son lives with me in Warren and
3 my father takes him to school. He's not available
4 to be able to take the other ones.

5 THE COURT: What about in the
6 afternoon?

7 MR. CONRAD: In the afternoon, my
8 ex-wife gets off work and she's there when they get
9 home from school.

10 THE COURT: Would you be hard
11 pressed to get here by 9:00?

12 MR. CONRAD: If I was sequestered, I
13 don't know how I would take care of the children,
14 especially the seven year old taking him to school.
15 He's so broken up over our divorce and stuff, he
16 doesn't want to ride the bus and he's really
17 emotional about it, so that is why I take him to
18 school every morning.

19 THE COURT: Mr. Bailey?

20 MR. BAILEY: No problem excusing
21 Mr. Conrad.

22 MR. JUHASZ: No questions. No

1 objection.

2 THE COURT: You are excused. We
3 thank you for your time.

4 (Juror No. 90, Rebecca Miller, entered the Jury room.)

5 THE COURT: You heard the questions
6 this morning. You held your hand up. What was
7 that about?

8 MS. MILLER: Truthfully, I forget
9 which one it was. I don't remember, but actually,
10 I had two reasons and they weren't specific
11 questions. One was that I read about everything
12 extensively to date and I formed some rather strong
13 opinions. And secondly, about 27 years ago, my
14 house was broken into and I was attacked and I was
15 robbed and I was beaten and I don't feel I could be
16 objective about this case at all. I would request
17 to be excused.

18 THE COURT: Mr. Bailey?

19 MR. BAILEY: No questions. No
20 problem excusing her.

21 MR. JUHASZ: No questions. No
22 objection.

1 (Juror No. 110, Stephen Luzar, entered the Jury room.)

2 THE COURT: Mr. Luzar, you held your
3 hand up this morning. Can you tell us what that is
4 about?

5 MR. LUZAR: Well, I got a 96 year
6 old mother and I watch her every day. My sister
7 comes in from Detroit and she takes her on the
8 weekend. She's 96. That is what I have been doing
9 for a few years.

10 THE COURT: That would be, you feel
11 that would be too much to ask your other two
12 siblings to take that over?

13 MR. LUZAR: One sister stays here at
14 night every day, all night long, and my brother, he
15 goes home at noon and I take it in the afternoon.

16 THE COURT: Mr. Bailey?

17 MR. BAILEY: No questions and no
18 problem excusing him.

19 MR. JUHASZ: No questions and no
20 objection.

21 THE COURT: Good luck to you. You
22 are excused and you have no further

1 responsibilities in this matter.

2 (Juror No. 116, Walter Smusz, entered the Jury room.)

3 THE COURT: Walter, good afternoon
4 to you. You held your hand up this morning. Tell
5 us why.

6 MR. SMUSZ: I have reservations for
7 Carlyle, Pennsylvania for a car meet on April 24th
8 and April 25th.

9 THE COURT: What is the date of
10 that?

11 MR. SMUSZ: April 24th and April
12 25th.

13 THE COURT: Any questions?

14 MR. BAILEY: No questions. No
15 objection.

16 MR. INGRAM: None from us. No
17 objection.

18 (Juror No. 119, Gayle Barbarini, entered the Jury
19 room.)

20 THE COURT: You held your hand up
21 this morning. What was that about?

22 MS. BARBARINI: I have a situation,

1 an ill family member and it is my mother's husband,
2 and I am the only sibling in this area. She
3 depends on me 100 percent. She's 77 years old, and
4 I am in touch with her on a day-to-day basis,
5 probably five, six times a day. I leave work and I
6 go to her home. I help take care of him. Also, I
7 have an employment situation, where my employer
8 will cover me, but I still have to go to work. I
9 have to make up. I have to go and do my work
10 because no one will do it for me.

11 THE COURT: You might be working
12 into the night if you were sitting on a Jury?

13 MS. BARBARINI: Yes. I have those
14 two situations where I am very concerned.

15 MR. BAILEY: Based on the first
16 reason, the State has no objection and we would
17 excuse her.

18 MR. JUHASZ: No questions. No
19 objection.

20 THE COURT: You are excused. We
21 thank you for your time.

22 (Juror No. 120, James Fetherolf, entered the Jury

1 room.)

2 THE COURT: You held your hand up.
3 For what reason?

4 MR. FETHEROLF: I have a couple of
5 doctor appointments. I have one on April 9th for
6 prostate, and Monday, the 14th, I have an
7 appointment and my wife has a follow up
8 appointment. She had major back surgery on the
9 18th.

10 THE COURT: How is she doing?

11 MR. FETHEROLF: Still has some pain.
12 My Mom had surgery yesterday with a hip replacement
13 and she should be coming home the end of next week.

14 THE COURT: You have had a bad run.
15 Mr. Bailey?

16 MR. BAILEY: With the prostate you
17 can't sit for any long period of time?

18 MR. FETHEROLF: It is just a check.

19 MR. BAILEY: So with the other two
20 things with your wife and your Mom, are you going
21 to have to take care of your Mom?

22 MR. FETHEROLF: Yes.

1 MR. BAILEY: And that starts next
2 week?

3 MR. FETHEROLF: The end of next week
4 she should be home.

5 MR. BAILEY: I take it your wife
6 can't handle that herself?

7 MR. FETHEROLF: She can't lift
8 nothing over five pounds.

9 MR. BAILEY: No further questions,
10 and we have no problem excusing him.

11 MR. JUHASZ: No questions. No
12 objection.

13 THE COURT: You are excused. We
14 wish you well with your family.

15 (Juror No. 123, Mary Costello, entered the Jury room.)

16 THE COURT: Good afternoon. You
17 held your hand up?

18 MS. COSTELLO: I have to bring it to
19 everybody's attention. I do know Jerry Ingram.
20 He's married to my sister's sister. She's my
21 husband's sister. We see each other occasionally
22 on holidays.

1 THE COURT: You feel that that would
2 have -- make it uncomfortable for you to sit?

3 MS. COSTELLO: Maybe not. I wanted
4 to bring it to your attention. I don't think it
5 would have a bearing either way.

6 THE COURT: The question boils down
7 to whether or not you could be seated and be fair
8 to both sides. We all know different people. You
9 are in affect related to him by marriage, then?

10 MS. COSTELLO: Yes.

11 THE COURT: The statute says, within
12 third degree of blood, but --

13 MR. INGRAM: I certainly don't think
14 we make the statute.

15 MS. COSTELLO: We don't. It may not
16 be a bearing.

17 THE COURT: You are doing what we
18 asked you to do. We appreciate that. Mr. Bailey,
19 why don't you ask whatever questions you have?

20 MR. BAILEY: Basically, what it
21 boils down to is, because of your relationship, if
22 we were able to prove our case beyond a reasonable

1 doubt, would you be able to return a guilty verdict
2 in the case?

3 MS. COSTELLO: Sure.

4 MR. BAILEY: If you felt that
5 circumstances, let's say we went to a second phase
6 and you did that balancing test that the Court is
7 going to talk about later and you found that the
8 death penalty was an appropriate verdict, would you
9 be able to return that verdict, in spite of the
10 fact that you know Jerry and you see him?

11 MS. COSTELLO: Yes.

12 THE COURT: John?

13 MR. JUHASZ: I have no questions.

14 THE COURT: You will be a part of
15 the pool, and you should call that number given to
16 you after tomorrow night. Stop downstairs and get
17 the papers you have to fill out. We thank you.

18 (Juror No. 125, Kirk Evans, entered the Jury room.)

19 THE COURT: Mr. Evans, you held your
20 hand up today?

21 MR. EVANS: Three times.

22 THE COURT: What was that about?

1 MR. EVANS: The first one is I went
2 to high school with Jerry Ingram. This is the
3 first time I have seen him since.

4 MR. INGRAM: We spent a fair amount
5 of time in detention together.

6 MR. EVANS: I think I still hold the
7 record. The other two things were financial
8 hardship. I work at Defireco Steel in Sharon and I
9 am laid off right now, and according to questions
10 the Unemployment asks, that would leave me, if I
11 was available to work, with no money coming in.
12 The third thing, it brings me to my second job.
13 You mentioned sequestration, my wife and I own a
14 small business. We do computer hardware and
15 software for physicians, which I normally do after
16 three and on weekends. If they had a problem
17 during that two to three week period, I wouldn't be
18 able to help them out at all.

19 THE COURT: You are probably the
20 brains as far as the technical part.

21 MR. EVANS: The hardware, she's the
22 software.

1 THE COURT: Mr. Bailey?

2 MR. BAILEY: No questions and no
3 objection.

4 MR. JUHASZ: No questions. No
5 objection.

6 THE COURT: Mr. Evans, we thank you.
7 You are excused.

8 (Juror No. 141, John Drummond, entered the Jury room.)

9 THE COURT: Mr. Drummond, you held
10 your hand up this morning. What was the reason for
11 that?

12 MR. DRUMMOND: I could be very
13 unbiased and listen to both sides and do all of
14 that. It is just that my wife passed away in June
15 and I got a 12 and 13 year old boy and I am doing
16 what I can to support them. I am a single parent
17 and I got two young boys and they are at a tough
18 age and they are going through a lot, and I got to
19 really be there for them. I could do everything.
20 That is where I am at with my kids, because my wife
21 was only 33 years old and they are going through a
22 hard time.

1 THE COURT: Hopefully you can get
2 through that and I'm sure you will. Mr. Bailey?

3 MR. BAILEY: No questions and no
4 problem with excusing him.

5 MR. JUHASZ: No questions. No
6 objection.

7 THE COURT: You are excused.
8 (Juror No. 148, Jessie Pilney entered the Jury room.)

9 THE COURT: You raised your hand
10 this morning. Tell us for what reason.

11 MS. PILNEY: I know about the case.
12 I heard about it. I heard about it on T.V. and in
13 the paper.

14 THE COURT: Well, over half the
15 people out there have. The question is, would you
16 be able to sit and listen to the evidence and
17 decide the case on the evidence without having your
18 mind made up beforehand, and setting aside anything
19 you heard on T.V. or the news? Because the case
20 has to be decided fairly on the evidence presented
21 in the Courtroom. Some people are able to do that,
22 and some aren't. The question here is, are you

1 able to?

2 MS. PILNEY: No.

3 THE COURT: You don't think so?

4 MS. PILNEY: No.

5 THE COURT: You think you have your
6 mind firmly fixed that what you read is probably
7 correct?

8 MS. PILNEY: What I saw on T.V.

9 THE COURT: Okay. Fair enough.

10 Mr. Bailey?

11 MR. BAILEY: Sometimes you go to
12 school and you take classes and you set aside
13 everything you learned before and it is like coming
14 in with a blank slate. If the Judge tells you
15 under the law, you are only allowed to consider
16 what is on that slate in the Courtroom and you have
17 to ignore everything else, can you set aside your
18 own opinions that you have? Now, it is sort of an
19 intellectual exercise when you are told to just
20 focus in on what happens in the Courtroom. Are you
21 able to do that? Even though you may know
22 things --

1 MR. INGRAM: I object to not giving
2 the juror an opportunity to answer the question.

3 THE COURT: You are trying to
4 explain before she answers.

5 MS. PILNEY: I saw on T.V., the 911
6 call that came in. I heard her when she walked in
7 and could that be a lie?

8 THE COURT: Any other questions?

9 MR. BAILEY: Well, it may well be
10 that this case is a different case from what you
11 heard on T.V. And you may hear the same tape in
12 this case. If the Judge tells you to ignore what
13 you heard outside of this Courtroom and just listen
14 to what you hear in the Courtroom, can you do that
15 or you are not able to do that?

16 MS. PILNEY: I don't know.

17 MR. BAILEY: You can't do that?

18 MS. PILNEY: No.

19 MR. BAILEY: No further questions.
20 No problem with excusing her.

21 MR. JUHASZ: No questions. No
22 objection.

1 THE COURT: You are excused. We
2 thank you for your time.

3 (Juror No. 155, Joseph Foor, entered the Jury room.)

4 THE COURT: You held up your hand
5 today. What was the reason?

6 MR. FOOR: I have got a vacation
7 coming on the 28th of this month. I plan on
8 leaving the State; and another reason, you spoke
9 that if it goes any further like the second trial,
10 we'll be in the hotel for a week. I am a single
11 parent of three kids and that is not going to work.

12 THE COURT: How old are your
13 children?

14 MR. FOOR: 16, 15 and 13.

15 MR. INGRAM: I am laughing because I
16 have teenagers. If I wasn't there for a week, I
17 wouldn't have a home when I came back.

18 MR. BAILEY: No objections, no
19 questions.

20 MR. JUHASZ: No questions. No
21 objections.

22 THE COURT: You have fun. Good

1 luck. You are excused.

2 (Juror No. 159, Everette Shaulis entered the Jury
3 room.)

4 THE COURT: You held your hand up
5 this morning?

6 MR. SHAULIS: I have a medical
7 excuse.

8 THE COURT: It looks like
9 hypertension and coronary heart. You would have a
10 problem sitting for any period of time?

11 MR. SHAULIS: Yes.

12 THE COURT: And stress doesn't go
13 well with you probably.

14 MR. SHAULIS: Not very well.

15 THE COURT: Do you have any
16 questions, Mr. Bailey?

17 MR. BAILEY: No questions. No
18 objection to excusing him.

19 MR. JUHASZ: No questions. No
20 objection.

21 (Juror No. 160, Timothy Best, entered the Jury room.)

22 THE COURT: You held your hand up

1 this morning out there?

2 MR. BEST: Yes, Sir.

3 THE COURT: What was the reason for
4 that?

5 MR. BEST: I am currently going
6 through a divorce that involves child custody
7 issues, and I would love to do my duty, I always
8 wanted to do this. I believe because of what is
9 going on in regards to the children and their newly
10 appointed guardian ad litem, would further harm my
11 children if I was involved for a longer period of
12 time.

13 THE COURT: You have got more
14 important things in your life at this time.

15 MR. BEST: Yes.

16 THE COURT: Mr. Bailey?

17 MR. BAILEY: No questions. No
18 objection to excusing him.

19 MR. JUHASZ: No questions. No
20 objection.

21 THE COURT: You are excused. We
22 thank you for your time and wish you well.

1 (Juror No. 165, Russell Humphrey, entered the Jury
2 room.)

3 THE COURT: You are Russell
4 Humphrey? Russell, you held your hand up this
5 morning. What was the reason for that?

6 MR. HUMPHREY: My mill is supposed
7 to close in October. It might be a financial
8 hardship.

9 THE COURT: Where do you work at?

10 MR. HUMPHREY: Oxford Automotive in
11 Masury.

12 THE COURT: I'm sorry to hear that.

13 MR. HUMPHREY: It is part of life, I
14 guess.

15 THE COURT: But a bad part. You
16 will be looking for work then in the meantime or
17 what?

18 MR. HUMPHREY: Right now, it is
19 going to be a matter of trying to save some money
20 to keep ahead of the bills a little bit.

21 THE COURT: You are worried, the
22 concern you have that might interfere with your

1 ability to sit here?

2 MR. HUMPHREY: Right.

3 THE COURT: Mr. Bailey, do you have
4 any questions?

5 MR. BAILEY: Your business doesn't
6 pay you while you are on Jury duty?

7 MR. HUMPHREY: That I don't think
8 so, but I'm not sure. I wouldn't swear to it.

9 MR. BAILEY: Do you work overtime?

10 MR. HUMPHREY: There's been no
11 overtime for two years.

12 MR. BAILEY: If they did pay you,
13 would you be able to sit during this time? It
14 would be between two and three weeks, probably over
15 the course.

16 MR. HUMPHREY: Yes, Sir, I would.

17 THE COURT: You would have no
18 problem with that?

19 MR. HUMPHREY: I have no problem.

20 THE COURT: Do you have any
21 questions?

22 MR. JUHASZ: No.

1 THE COURT: Let's leave it this way.
2 You will go into the pool for potential juror here.
3 You check with your employer, if there's no problem
4 and you are willing to serve, get in touch with
5 Connie downstairs, and tell her that you are
6 available. If there's a problem, is there any
7 objection to him being dismissed?

8 MR. BAILEY: No objection.

9 MR. JUHASZ: No objection.

10 (Juror No. 174, Brenda Morris-Bolger, entered the
11 Jury room.)

12 THE COURT: You are my cousin,
13 aren't you?

14 MS. MORRIS-BOLGER: Yes.

15 THE COURT: Brenda, you held your
16 hand up this morning. What is the reason for that?

17 MS. MORRIS-BOLGER: Family
18 situation. My father passed away three weeks ago.
19 Currently taking care of my Mom, she lives with me.
20 She has dementia, so I am responsible for doctors,
21 lawyers, anything of that nature.

22 THE COURT: I'm sorry to hear that.

1 I wasn't aware that your Dad had passed away. I'm
2 sorry to hear that. Any questions by Mr. Bailey?

3 MR. BAILEY: No questions and no
4 problem excusing her.

5 MR. JUHASZ: No questions. No
6 objection.

7 (Juror No. 189, Sheria Grayer, entered the Jury room.)

8 THE COURT: Miss Grayer, you held
9 your hand up this morning. What was the reason for
10 that?

11 MS. GRAYER: I wasn't sure what was
12 said, but I couldn't -- I have reasons for why I
13 can't be in the Jury. I'm self-employed, and right
14 now I am on a lease basis from week to week. I am
15 an independent contractor, so if I don't work, I
16 lose total income. My family is in a situation --
17 it wouldn't be so bad, but my family is in a
18 situation right now where me and my brother had to
19 come back home to help him. He got into a car
20 accident in November, so he's dealing with health
21 issues, no health insurance. So we're in a hard
22 way right now. If it wasn't for that, I would

1 probably be better, because I could work my
2 schedule in some kind of way. I have never been
3 picked for Jury duty. I don't know how the
4 schedule is. If I was not at work, I lose total
5 income because I am self-employed.

6 THE COURT: The schedule that we'll
7 follow here is somewhat hectic and that
8 particularly with your situation, that might cause
9 an awful lot of problems for you. Mr. Bailey?

10 MR. BAILEY: No questions and no
11 objection to excusing her and wish her well on her
12 current situation.

13 MR. JUHASZ: No questions. No
14 objection.

15 THE COURT: You are excused and good
16 luck to you.

17 (Juror No. 197, Patrick Russell, entered the Jury
18 room.)

19 THE COURT: You heard the questions
20 this morning, what was that?

21 MR. RUSSELL: I started a new job
22 and have only been there seven weeks. I won't get

1 paid.

2 THE COURT: Where are you working?

3 MR. RUSSELL: Niles Drill Service.

4 THE COURT: How long have you been
5 there?

6 MR. RUSSELL: Eight weeks.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: You have a child, a
9 young child at home and you need the money for your
10 family?

11 MR. RUSSELL: Yes.

12 MR. BAILEY: If you are not getting
13 paid, it is an extreme financial hardship?

14 MR. RUSSELL: Yes.

15 MR. BAILEY: No objection to him
16 being excused.

17 MR. JUHASZ: No questions. No
18 objection.

19 THE COURT: Mr. Russell, you are
20 excused. You have no further responsibilities in
21 this matter.

22 (Juror No. 199, Amy Barlett, entered the Jury room.)

1 THE COURT: Miss Barlett, you held
2 your hand up this morning. What was that for?

3 MS. BARLETT: I don't feel as though
4 I am capable of making a decision like that right
5 now.

6 THE COURT: Would it make you feel
7 any different if I told you that probably 99 out of
8 the 100 people out there would say the same thing?

9 MS. BARLETT: Really?

10 THE COURT: Who could feel about
11 being asked to sit on a case.

12 MS. BARLETT: I can see that.

13 THE COURT: The point is that some
14 people under no circumstances, could ever make that
15 decision. That is just not in them. People on the
16 other side of the coin, that could very easily make
17 it because they feel any time a murder is
18 committed, a person should forfeit their life.
19 That isn't the law. The law is to take 12 ordinary
20 people and put them on a Jury, and have them decide
21 first guilt or innocence and then once that is
22 done, if they make a finding of guilty, they are

1 called upon to weigh these factors, aggravating
2 circumstances, mitigating factors, and I'm sure, I
3 have never been on such a Jury, I never will. I
4 can't be. But there's just people like yourself
5 that we ask to do that. That is one of the hard
6 parts about being a juror. Again, it is something
7 you have to look within your own heart and answer,
8 can you follow the law no matter where that may
9 lead you, based on the facts?

10 MS. BARLETT: Yes, okay.

11 THE COURT: You have to answer for
12 yourself first, and give us the primary assurance
13 that you are able and will follow the law wherever
14 that leads.

15 MS. BARLETT: Yes.

16 THE COURT: Are you able to do that?

17 MS. BARLETT: Yes.

18 THE COURT: Questions?

19 MR. BAILEY: Amy, I guess it is sort
20 of like being back in school. You are just a year
21 away from high school, and I take it you have been
22 in classes before where the teacher has given you

1 instructions, you listen closely in class. You
2 can't take notes like you do in school, but pay
3 attention, and you have to remember certain things.
4 And then, you go back with other folks on the Jury,
5 if you are on the Jury, and you listen to the
6 Judges instructions, and you apply the Judges
7 instructions to the facts that you heard, and
8 determine if it fits in there and whether we proved
9 what we're supposed to prove. And if we do, then
10 you go onto a second phase. You find the Defendant
11 guilty in the first phase, then we move onto a
12 second phase, and you would have to determine what
13 the appropriate punishment would be. And the same
14 thing happens, you listen to maybe more evidence
15 and you hear more instructions from the Judge. It
16 is like being back in school and you would go back
17 with the other folks and then you make a decision
18 as to what the appropriate punishment would be. Do
19 you think you could do that?

20 MS. BARLETT: I don't know. To tell
21 you will the truth, I am nervous.

22 MR. BAILEY: I imagine everybody is

1 nervous. It is not something that we ask people to
2 do every day to sit on a death penalty case. You
3 have made decisions before, right? You do work?

4 MS. BARLETT: Right.

5 MR. BAILEY: And do you think that
6 you may be younger than most of the other jurors,
7 but you are an adult, do you think you would be
8 able to sit there and listen to things and be able
9 to make up your own mind and reach a decision?

10 MS. BARLETT: Yes.

11 THE COURT: Mr. Juhasz?

12 MR. JUHASZ: No questions.

13 THE COURT: You will be in the pool,
14 so you will have to call that number after tomorrow
15 evening, 4:30. Stop downstairs before you leave
16 and pick up those papers to bring back. Thank you.
17 (Juror No. 201, Katherine Blackann, entered the Jury
18 room.)

19 THE COURT: Katherine, you held your
20 hand up this morning?

21 MS. BLACKANN: Yes.

22 THE COURT: What was the reason for

1 that?

2 MS. BLACKANN: You had asked about
3 capital punishment and I don't agree with that, and
4 the other reason was because we're going to be
5 going on vacation before Easter and after Easter,
6 but I wanted to say one thing because you told me
7 to be truthful. I wanted to say that I don't feel
8 that I can stand in judgment upon this woman. I
9 don't feel that I can do it because I am too
10 convicted of that. I could never say to her, for
11 her to be guilty or not guilty.

12 THE COURT: Is that a religious
13 conviction?

14 MS. BLACKANN: Very religious.
15 Conviction in my heart. I live with it. I feel it
16 would be an injustice to the Court system to put me
17 on there. I wouldn't be able to say one way or the
18 other. That is how I feel.

19 THE COURT: Fair enough.

20 MR. BAILEY: That is not just this
21 case, it is any case?

22 MS. BLACKANN: Right. Anything. I

1 have a deep conviction about that.

2 MR. BAILEY: No objection and no
3 further questions.

4 THE COURT: She will be on vacation.
5 Any objection?

6 MR. JUHASZ: No objection. No
7 questions.

8 THE COURT: We thank you very much.
9 (Juror No. 203, Edward Schmidt, entered the Jury
10 room.)

11 THE COURT: Edward, you held your
12 hand up this morning. What would that be for?

13 MR. SCHMIDT: That would be
14 financial. I work for Maverick Tube now. It is
15 LTV, old LTV in Youngstown. They are going to
16 close next week. I'm going to lose my job. I
17 don't know if State funds will pay for me when I'm
18 here.

19 THE COURT: If they are closing,
20 after the first week, I think there's one week you
21 don't collect.

22 MR. SCHMIDT: I have been on and off

1 Unemployment now for awhile.

2 THE COURT: You haven't used the
3 time up?

4 MR. SCHMIDT: No. Not all of it,
5 what happens is my TRA and TAA time are from
6 December 13th of last year, and it only runs for a
7 certain amount of time. I did want to go back to
8 school. I don't know how long the trial is going
9 to last.

10 THE COURT: Nor did we. That leaves
11 you up in the air then.

12 MR. BAILEY: Mr. Schmidt, I take it
13 once the mill closes, then you are going to be
14 looking for other work?

15 MR. SCHMIDT: Yes.

16 MR. BAILEY: You would rather be
17 spending your time doing that?

18 MR. SCHMIDT: I have put a couple of
19 interviews on hold because of this.

20 MR. BAILEY: No further questions.
21 No objection.

22 MR. JUHASZ: No questions. No

1 objection.

2 THE COURT: You are excused. We
3 wish you good luck.

4 (Number 208, Melissa Buhala, entered the Jury room.)

5 THE COURT: You held your hand up
6 this morning. Why is that?

7 MS. BUHALA: Because of work and
8 school. I'm going to YSU. I work a full time job,
9 plus I waitress on the weekends. My only day off
10 is Wednesdays when I get to do all of my homework
11 and do all of my running around to get things done.

12 THE COURT: Do you get any sleep?

13 MS. BUHALA: I try to.

14 THE COURT: You have a lot of things
15 going?

16 MS. BUHALA: Yes.

17 MR. BAILEY: Spending two, three
18 weeks here, that would kill school, wouldn't it?

19 MS. BUHALA: I think so. Finals are
20 coming up.

21 MR. BAILEY: No objection to
22 excusing her.

1 MR. JUHASZ: No questions. No
2 objection.

3 (Juror No. 210, Kara Gillespie, entered the Jury
4 room.)

5 THE COURT: Kara, you held your hand
6 up this morning?

7 MS. GILLESPIE: Yes.

8 THE COURT: What was that for?

9 MS. GILLESPIE: I am out of a job
10 right now. I am supposed to be starting a new job.
11 I am on my own, I am 21. I won't be able to afford
12 it.

13 THE COURT: When are you starting
14 your job?

15 MS. GILLESPIE: Sometime this week.

16 THE COURT: Mr. Bailey?

17 MR. BAILEY: No questions. No
18 problem excusing her.

19 MR. JUHASZ: No questions. No
20 objection.

21 THE COURT: You are excused. Thank
22 you very much.

1 (Juror No. 212, James Weller, entered the Jury room.)

2 THE COURT: You held your hand up?

3 MR. WELLER: It would be work
4 related. I'm president of the local steel service
5 center. We have four here and one in Knoxville,
6 Pennsylvania, and I travel a tremendous amount.
7 Normally I don't even go on vacation for a week.
8 To be out three or four weeks would be very
9 difficult.

10 THE COURT: Mr. Bailey?

11 MR. BAILEY: I take it that would
12 make it rough for everybody else at work, if you
13 are not there?

14 MR. WELLER: Yes.

15 MR. BAILEY: No further questions.
16 No objection to excusing him.

17 MR. JUHASZ: No questions. No
18 objection.

19 (Juror No. 218, Judith Elliott entered the Jury room.)

20 THE COURT: You held your hand up
21 this morning. Tell us what that was about.

22 MS. ELLIOTT: Because I took an oath

1 not to discuss anything that I would hear in the
2 news media or discuss it with my family, in this
3 case and really not to judge ahead of time. I
4 lumped that all into one when I raised my hand. I
5 put it all in one thing when I raised my hand
6 because it is what I believe a vow is, you don't
7 discuss it. I raised my hand because I agreed not
8 to discuss it. That is what I would want if it
9 happened to me.

10 THE COURT: You think then that you
11 would be able to sit?

12 MS. ELLIOTT: Yes, I would.

13 THE COURT: You understand that a
14 good portion of the people in this prospective Jury
15 have read or heard something about the case, but
16 that doesn't disqualify you if you are able to set
17 that aside, because the case, to be tried fairly,
18 has to be on what comes out in the Courtroom.

19 MS. ELLIOTT: I haven't heard hardly
20 anything, I can honestly tell you that.

21 THE COURT: You have no problem with
22 doing that?

1 MS. ELLIOTT: No problem.

2 MR. BAILEY: You are saying you
3 could be a juror?

4 MS. ELLIOTT: Yes, I could.

5 MR. BAILEY: No questions at this
6 time.

7 MR. INGRAM: I have one.

8 THE COURT: You will be in the pool
9 from which the Jury will be drawn, and call that
10 number tomorrow evening after 4:00 and stop
11 downstairs and pick up the papers you have to fill
12 out.

13 (Juror No. 219, Janine Veits entered the Jury room.)

14 THE COURT: You held your hand up
15 this morning?

16 MS. VEITS: I work for a law firm in
17 Twinsburg and I have a letter from my employer. We
18 handle foreclosure. I am in charge of training and
19 the case flow in my office. For me to be out any
20 length of time would result in a lot of our cases
21 being dismissed.

22 THE COURT: This reads it is from

1 Riemer, LPA. "Gentlemen, Janine Veits is a
2 critical support person at our firm. Her absence
3 at this time would create a hardship. I
4 respectfully request that she be excused from Jury
5 duty."

6 MR. BAILEY: You have to be there
7 during the day when these things are done? You
8 can't do some work in the evening?

9 MS. VEITS: Right now, our case
10 flow, we specialize in foreclosures and our case
11 flow is so heavy, that I have got four people that
12 I am training. They have only been there a couple
13 of weeks.

14 MR. BAILEY: That would throw the
15 whole office off?

16 MS. VEITS: Right.

17 MR. BAILEY: No problem with
18 excusing her.

19 MR. JUHASZ: No questions. No
20 objection.

21 (Juror No. 222, William Schultz entered the Jury
22 room.)

1 THE COURT: Mr. Schultz, you raised
2 your hand this morning. What was that for?

3 MR. SCHULTZ: I have a disability
4 and it is tough for me to drive over here. If it
5 is sunny out -- I have one eye and I'm going blind
6 in that one eye and this morning, it was heck for
7 me to get here.

8 THE COURT: You are not comfortable
9 with driving that far?

10 MR. SCHULTZ: Correct. I live in
11 Hartford.

12 THE COURT: You work locally there
13 or what?

14 MR. SCHULTZ: Disabled.

15 THE COURT: Any questions?

16 MR. JUHASZ: I take it, whenever it
17 is sunny, with only one eye, it makes it really
18 difficult?

19 MR. SCHULTZ: Hard to drive and when
20 it is raining.

21 MR. BAILEY: Driving home in the
22 afternoon would make it difficult. No objection.

1 MR. JUHASZ: No questions. No
2 objection.

3 THE COURT: We thank you for your
4 time.

5 (Juror No. 223, Christine Hake, entered the Jury
6 room.)

7 THE COURT: You raised your hand
8 this morning. What was the reason for that?

9 MS. HAKE: Read about it in the
10 paper.

11 THE COURT: As I have told other
12 people here, most of the people out there have read
13 something probably about this, and that doesn't
14 disqualify you unless it would be so fixed in your
15 mind, one way or another, that you could not set
16 that aside and listen to the case on the merits.

17 MS. HAKE: I don't even really
18 remember.

19 THE COURT: I think that is probably
20 true of most people that did read something,
21 remember the name and that is it. We could have
22 your assurance that you would be able to listen to

1 the evidence, and gauge the case on the merits of
2 the evidence presented to you in Court, not on
3 something you have read or think you have read
4 outside of Court? You wouldn't have any problem
5 doing that?

6 MS. HAKE: I don't think so.

7 THE COURT: Any other reason why you
8 could not be seated on this Jury?

9 MS. HAKE: I don't really think I
10 have the right to pass judgment.

11 THE COURT: Again I would suggest to
12 you that you are not unusual.

13 MS. HAKE: Other than that --

14 THE COURT: The question on that is
15 whether you are able and willing to follow the law.
16 Most people that sit on a Jury, any person of any
17 sensibility at all is going to be very reluctant to
18 be asked to make the decision that the Jury might
19 have to make, maybe won't get to that point. If
20 you do, do you think there would be many people, if
21 any, in a Jury that would look with relish towards
22 making that decision? I don't think so.

1 MS. HAKE: Probably not.

2 THE COURT: But the system is set
3 up, so taking into account, people's reluctance to
4 consider such things, we're called upon to ask
5 people to do that very thing, to make those
6 judgments. Do you feel that if the State proved
7 its case and got a guilty plea, a guilty verdict --
8 I'm sorry, do you think you could go into a second
9 phase and follow the law, deciding the facts and
10 applying them to the law?

11 MS. HAKE: As far as -- I don't
12 understand.

13 THE COURT: Making the decision on
14 what penalty should be imposed?

15 MS. HAKE: I guess, yes, I know what
16 laws you said were out there.

17 THE COURT: You have no way of
18 knowing at this point. The bottom line is, can you
19 follow the law, setting aside any feelings you have
20 about you not thinking you should be called upon to
21 make those decisions?

22 MS. HAKE: You are asking like, as

1 far as like a religion thing?

2 THE COURT: Do you have a religious
3 objection or moral objection?

4 MS. HAKE: That is what I mean by I
5 don't believe I have the right to pass judgment.

6 THE COURT: I would suggest that
7 most people feel that same way. They are very
8 reluctant to make those decisions. A lot of people
9 feel human beings shouldn't be asked to do that.

10 MS. HAKE: I don't think I should
11 be.

12 THE COURT: There are a few people
13 who really feel that strongly. Most people I think
14 would feel that the law is the law and I am willing
15 to follow the law.

16 MS. HAKE: I could follow the law,
17 yes, I could.

18 THE COURT: If you have a religious
19 or moral or ethical position that would not allow
20 you to make that decision --

21 MS. HAKE: No.

22 THE COURT: You do not?

1 MS. HAKE: No.

2 THE COURT: Mr. Bailey?

3 MR. BAILEY: You are saying you
4 could reach a conclusion?

5 MS. HAKE: Yes, I could. If I was
6 picked to be a juror, yes, I could. I'm not saying
7 I can't do it.

8 MR. BAILEY: You feel there's God's
9 law, there's man's law and we're asking you under
10 man's law, you could listen to the facts and
11 certain instructions from the Judge and then render
12 a decision?

13 MS. HAKE: Yes, I could.

14 MR. INGRAM: I don't think there's
15 any questions at this time.

16 THE COURT: You are in the pool,
17 from which this Jury will be selected. Call that
18 number after 4:30 tomorrow evening, and stop
19 downstairs and get those papers to fill out and
20 bring back. Thank you.

21 (Juror No. 230, William Danklefsen entered the Jury
22 room.)

1 THE COURT: William, you held your
2 hand up this morning?

3 MR. DANKLEFSEN: I'm asking to be
4 excused because of work related. I work at
5 Continuous Run-over at Delphi. It is a three day
6 on, three day off job. And I have a commitment at
7 home to a wife and family. I have three kids under
8 four years old.

9 THE COURT: Your work again, you
10 work three days and off three days?

11 MR. DANKLEFSEN: Yes. It is
12 continuous run. I work at night. I'm obligated to
13 be in at work at 5:30 at night and work until six
14 A.M.

15 THE COURT: What do you do there?

16 MR. DANKLEFSEN: Engineer.

17 THE COURT: Mr. Bailey?

18 MR. BAILEY: Do they pay if you are
19 on Jury duty? Do they pay you for that?

20 MR. DANKLEFSEN: I don't believe so.

21 MR. BAILEY: And if you are not
22 there, what happens?

1 MR. DANKLEFSEN: They usually cover
2 my position with someone else.

3 MR. BAILEY: This would take
4 probably between two and three weeks, over the next
5 month or so. Would you -- you are saying you
6 wouldn't be able to stay away that long from work
7 and they wouldn't be able to cover you.

8 MR. DANKLEFSEN: I'm not sure. I'm
9 not sure what the work would do.

10 MR. BAILEY: Could you check with
11 them to see if you could get paid? What about your
12 home obligations? Is your wife able to take care
13 of the kids?

14 MR. DANKLEFSEN: On occasion, I do
15 help out. They go to Day Care one day a week and
16 commitment with the kids just in general.

17 MR. BAILEY: On your three days off,
18 I take it you help more at home?

19 MR. DANKLEFSEN: Yes.

20 MR. BAILEY: If you weren't there
21 for those three days, like let's say we don't work
22 weekends unless you are sequestered, sequestration,

1 that is not like from a week or two at a time, that
2 would only be when you are deliberating at the end
3 of the first phase and if we get to a second phase
4 would be when you are deliberating in the second
5 phase. And we don't know how long that will be.
6 That could be a day, it could be two or three days
7 or more. Each Jury is different, but would you, do
8 you think you would be able to get off that much
9 time from work? It would be like, if you are on
10 three days and off three days, you probably would
11 be missing six or nine days of work during the
12 course of the entire trial.

13 MR. DANKLEFSEN: It depends on how
14 it falls as far as my schedule and the weekends. I
15 can look into that.

16 MR. BAILEY: Could you check that
17 and see whether you are getting paid?

18 MR. DANKLEFSEN: Sure.

19 MR. BAILEY: If they did pay you and
20 you are able, if your wife would be able to pick up
21 some slack with the kids for that period of time,
22 do you think you might be able to serve?

1 MR. DANKLEFSEN: Yes, I would say
2 so.

3 THE COURT: Fair enough.

4 MR. JUHASZ: No questions.

5 THE COURT: For the time being, you
6 will be in the pool. You will notify Connie
7 downstairs if any of these contingencies don't fall
8 into place where you can serve. You should call
9 that number after 4:30 tomorrow evening and pick up
10 the papers to be filled out.

11 MR. DANKLEFSEN: If my employer
12 would request me to work, I still would be working
13 my night turn 5:30 until 6:00 A.M. and then coming
14 here to work as a juror as well.

15 THE COURT: We wouldn't want you to
16 do that. If you can get off and get paid, the way
17 I understand it, then you will serve. If you
18 can't, fine.

19 MR. DANKLEFSEN: You still want me
20 to fill out the paperwork? How do I let you know
21 so that you are aware of that condition?

22 THE COURT: Call Connie downstairs

1 and tell her.

2 MR. BAILEY: You have got to be
3 awake in here.

4 MR. DANKLEFSEN: I understand.

5 (Court in Recess at 2:35 p.m.)

6 (Juror No. 235, Dawn Hanna, entered the Jury room.)

7 THE COURT: Dawn, you raised your
8 hand this morning?

9 MS. HANNA: Yes.

10 THE COURT: What was that about?

11 MS. HANNA: Well, economically, I
12 don't think -- well, it would be difficult for me
13 to miss a lot of work. I have two kids at home. I
14 am a single parent. If the Jury were to be
15 sequestered, it would be hard for me to get someone
16 to stay with the kids.

17 THE COURT: How old are they?

18 MS. HANNA: 13 and 14.

19 THE COURT: You sure don't want to
20 leave them home alone by themselves.

21 MS. HANNA: No, not overnight.

22 THE COURT: Mr. Bailey?

1 MR. BAILEY: No questions. No
2 objection.

3 MR. INGRAM: None from us. No
4 objection.

5 THE COURT: You are released for
6 cause.

7 (Juror No. 236, Jack Rusnak entered the Jury room.)

8 THE COURT: You held your hand up
9 this morning?

10 MR. RUSNAK: Yes.

11 THE COURT: What was that
12 concerning?

13 MR. RUSNAK: I was sworn in.

14 THE COURT: Besides when I asked if
15 anybody had any reason why they couldn't serve on
16 the Jury.

17 MR. RUSNAK: I am opposed to capital
18 punishment, the death sentence.

19 THE COURT: You are not alone in
20 that. There's a lot of people that -- you ask
21 people, "Are you for or against capital
22 punishment?" Some are going to say, "I am for it,"

1 and some are going to say, "I am against it," and
2 everybody is entitled to their opinion. The
3 question that is put to a prospective juror is, no
4 matter what your personal opinion is about the
5 subject, are you able to follow the law? And the
6 law in Ohio says that in certain circumstances, the
7 juror is called upon to decide whether or not that
8 is an appropriate punishment or not. Now you have
9 a few people to the extreme of the one side of the
10 issue who say, "I have a religious or moral
11 conviction, I could under no circumstances, ever
12 impose a death penalty on somebody. I don't care
13 if it is a mass killer that kills 50 people in cold
14 blood, I could never impose that penalty." You
15 have people on the other side of the spectrum, who
16 just as fervently believe that anybody who takes
17 another life should forfeit their life. Well,
18 neither of that type of person could sit on a Jury,
19 because they can't follow the law. And the law
20 says that capital punishment is a darn serious
21 thing, and that they set up the procedure, the two
22 step procedure years ago. The Jury just made a

1 finding of guilty or not guilty and that was it.
2 The Judge sentenced. Now, they put that extra step
3 in there so that the Jury has to consider the
4 aggravating factors and weigh it against any
5 mitigating or aggravating circumstances, against
6 the mitigating factors. So the Jury is then called
7 upon to look and see if the State has proven all of
8 those things beyond a reasonable doubt, where the
9 aggravating portion outweighs the mitigating. And
10 then the Jury is called upon to make a very tough
11 decision, what is an appropriate sentence. And
12 whatever the facts are -- I don't think that is an
13 easy decision for anybody to make and I don't know
14 anybody in their right mind who would really ask to
15 be put in that situation, but that is what the law
16 requires, is to choose 12 people who are able to at
17 least consider the possibility if the facts and the
18 law require it, to impose it. You get the picture?

19 MR. RUSNAK: I do.

20 THE COURT: I don't know if that
21 makes you feel any better or what, you tell us.

22 MR. RUSNAK: First of all, with all

1 due respect to the laws of Ohio, which I try to,
2 with which I try to abide, I don't know that the
3 State should have the right to take someone's life.

4 THE COURT: You are getting into a
5 more basic position and that is fine. You have the
6 right to that. If I take from your answer, if I
7 said that you feel that that is not something that
8 the law should require, is that right?

9 MR. RUSNAK: That is correct. I
10 base that on a lot of thinking in that area.

11 THE COURT: You hold that as a moral
12 or religious tenant?

13 MR. RUSNAK: Yes, both.

14 THE COURT: You don't think you
15 could set that aside and follow the law?

16 MR. RUSNAK: I think I would have
17 great difficulty doing that.

18 THE COURT: You are being very
19 candid and that is what we ask. Mr. Bailey, you
20 may inquire.

21 MR. BAILEY: I take it, your
22 conviction is so -- you felt this for a long time?

1 MR. RUSNAK: Yes.

2 MR. BAILEY: And you have only, you
3 have become more set in your conviction as time has
4 gone on, the more thinking you have done about it.

5 MR. RUSNAK: And the more reading.

6 MR. BAILEY: I take it that it is so
7 firmly set that no matter what the State's
8 evidence -- well, let me ask you this. Would it
9 affect your ability in the first phase that deals
10 with guilt or non-guilt, not the penalty, but guilt
11 or non-guilt of the specific crimes that are
12 charged here, would it affect your ability to
13 render a decision if we were able to prove the
14 facts, the elements of the crimes, by proof beyond
15 a reasonable doubt so that you are firmly convinced
16 of the truth of the charge to a moral certainty;
17 would you be able to return a guilty verdict in the
18 first phase, finding the Defendant guilty?

19 MR. RUSNAK: Knowing the
20 possibility --

21 MR. BAILEY: Knowing what the
22 possibility was, if you did so of the possible

1 death penalty?

2 MR. RUSNAK: I think not.

3 MR. BAILEY: You think it would
4 affect you in the first phase?

5 MR. RUSNAK: I am afraid so, yes,
6 and there have been a number of reasons, other
7 countries that have decided this, and it is not a
8 comfortable position, I can assure you.

9 MR. BAILEY: It shouldn't be.

10 MR. RUSNAK: Somebody commits a
11 heinous crime, and for example, someone would say
12 to someone, what if somebody injured one of your
13 family, did a terrible thing, what would you do?
14 Well, I might kill them in a fit of rage or
15 something, but if I thought about it, I would
16 prefer to see them put away.

17 MR. BAILEY: And I take it then,
18 that based on your -- the firmness of your beliefs,
19 both moral and religious, that if we were to get
20 into a second phase where the question would be
21 what the appropriate penalty would be and the State
22 were to convince you by proof beyond a reasonable

1 doubt, that the aggravating circumstances, whatever
2 we have got in the second phase, would outweigh the
3 unreasonable doubt, whatever mitigating factors
4 there were, so that the appropriate penalty would
5 be the death penalty, in this case, there's no way
6 you would ever be able to return that verdict; is
7 that what you are telling us?

8 MR. RUSNAK: I think that is
9 correct. There would be no way that I could do it.

10 MR. BAILEY: You understand, people
11 hold opinions on all sides of the spectrum, and
12 there's nothing wrong with that?

13 MR. RUSNAK: I understand the law
14 and I understand why they have it. Maybe it is a
15 deterrent. That is another subject.

16 MR. BAILEY: Our issue today is
17 whether you feel that you are a fit juror to sit on
18 this particular case. You may be able to sit on
19 any other case, but this type of case is the type
20 of case where you feel that you would not be able
21 to give the people of the State a fair shake; is
22 that fair?

1 MR. RUSNAK: That is a fair
2 statement.

3 THE COURT: Any questions by the
4 Defense?

5 MR. INGRAM: Yes. How are you?

6 MR. RUSNAK: Fine, thank you.

7 MR. INGRAM: Thank you for your
8 candor and we certainly respect your opinions. You
9 understand that the parties in any criminal case
10 are entitled to a Jury that reflects a cross
11 section of the community?

12 MR. RUSNAK: Yes.

13 MR. INGRAM: It is by asking all
14 kinds of people from the varying walks of life to
15 come and sit on a Jury and share their views, that
16 we're confident that when those 12 people can
17 agree, that they have arrived at a right decision;
18 does that make sense?

19 MR. RUSNAK: Sure.

20 MR. INGRAM: Some people in this
21 State support the death penalty. Some people in
22 this State oppose the death penalty. It would not

1 be fair to have a Jury composed only of people who
2 opposed the death penalty, do you agree?

3 MR. RUSNAK: Yes.

4 MR. INGRAM: And conversely, it
5 would not be fair to only have a Jury composed of
6 people who would be in favor of the death penalty?

7 MR. RUSNAK: Particularly if it
8 reflects the public in what they want.

9 MR. INGRAM: As a result, all -- as
10 a result, all we really ask of jurors is that they
11 temporarily set aside their personal feelings and
12 follow the instructions of the Court, so that the
13 Jury can indeed reflect a cross section of the
14 community. Do you think you could do that?

15 MR. RUSNAK: No.

16 MR. INGRAM: Fair enough.

17 MR. RUSNAK: Incidentally, I could
18 go into some religious aspects, but I would be
19 taking your time.

20 THE COURT: You are being very
21 honest, we appreciate that. Any objection to
22 dismissing for cause?

1 MR. INGRAM: No.

2 MR. BAILEY: No objection to
3 dismissing him.

4 THE COURT: Thank you.

5 MR. INGRAM: If we object to the
6 excusal of any particular juror, we'll note our
7 objection for the record, absent an objection. We
8 do not object.

9 MR. BAILEY: Me too.

10 (Juror No. 241, Charles Fink, entered the Jury room.)

11 THE COURT: You held your hand up
12 this morning. What was that about?

13 MR. FINK: I have two daughters, one
14 in Junior High and one in elementary school, and
15 their mother goes to school full time and she works
16 full time and in 2000, I had open heart surgery and
17 I'm not allowed to work, and we moved here in 1992
18 and we really don't know too many people around
19 there. There would be no one to pick up my
20 children from school. They have to be picked up
21 from school at 2:20 and 2:45.

22 THE COURT: You are not from Warren

1 originally?

2 MR. FINK: No.

3 THE COURT: So you have a very
4 difficult situation with getting your children
5 picked up, dropped off and whatever?

6 MR. FINK: Yes.

7 THE COURT: No one to help you very
8 much with that?

9 MR. FINK: No.

10 MR. BAILEY: No objection to
11 excusing him.

12 THE COURT: You are excused. We
13 thank you for your time. You have a good day.

14 MR. INGRAM: We have no questions
15 and based upon my past rule, we have no objection,
16 because I didn't state one.

17 (Juror No. 250, Patricia Sawyer, entered the Jury
18 room.)

19 THE COURT: You held your hand up
20 this morning in response to what question?

21 MS. SAWYER: I have multiple
22 sclerosis and I have an appointment with the

1 Cleveland Clinic on the 10th, and they found --
2 they are doing ultrasound. They found a mass in my
3 thyroid. I have an appointment with Dr. Newman. I
4 don't know what is going to come out of that. I
5 have a shot once a week. My daughter-in-law gives
6 me that.

7 MR. BAILEY: Based on these doctors'
8 appointments, you may need to schedule further
9 doctors' appointments.

10 MS. SAWYER: Yes.

11 MR. BAILEY: We have no problem
12 excusing her.

13 THE COURT: Okay. You are excused.
14 We wish you well.

15 (Juror No. 255, Diane Petsko, entered the Jury room.)

16 THE COURT: Diane, you held your
17 hand up this morning. What was the reason for
18 that?

19 MS. PETSKO: It is really medical.
20 I have a lot of arthritis in my back and leg, and
21 it is hard for me to sit. My leg as well as --
22 next week I have to go to the doctor, because I

1 have a nodule on my thyroid which they did two
2 biopsies on. I don't know what they will do about
3 that. And after that, I have gallstones. I have
4 quite a bit going.

5 THE COURT: Sounds like it.

6 MR. BAILEY: And based on that, you
7 don't know if you are going to need more
8 treatments?

9 MS. PETSKO: They aren't sure, I
10 don't know what they are going to do. They can't
11 really get a piece of my thyroid. They have done
12 it twice. I haven't seen the doctor. I don't know
13 what they are going to want me to do with that.
14 After that the surgeon said, the gallstones.

15 MR. BAILEY: With the arthritis
16 alone though, that makes it very difficult to sit?

17 MS. PETSKO: My leg will swell
18 really bad if I sit really long.

19 MR. BAILEY: You are saying you
20 would rather not be here?

21 MS. PETSKO: Right.

22 MR. BAILEY: No objection.

1 MR. INGRAM: No questions. No
2 objection.

3 (Juror No. 258, Kenneth Roberts, entered the Jury
4 room.)

5 THE COURT: Good morning, Sir.
6 Mr. Roberts, you held your hand up this morning.

7 MR. ROBERTS: Yes, Sir.

8 THE COURT: What was that about?

9 MR. ROBERTS: Just that I read
10 something in the newspaper.

11 THE COURT: Most of the people out
12 in that Courtroom probably did. The question is,
13 are you able to set aside anything, any impression
14 you may have had, and if called upon to be a juror,
15 to decide this case on the evidence that is
16 presented in the courtroom?

17 MR. ROBERTS: Yes, Sir.

18 THE COURT: You think you can do
19 that?

20 MR. ROBERTS: Yes, Sir.

21 THE COURT: So many times newspapers
22 get things all messed up, and it is not -- no one

1 should be tried in the newspapers. It is on the
2 evidence presented, after the Jury has had an
3 opportunity to review that evidence and to make a
4 decision.

5 MR. ROBERTS: Yes.

6 THE COURT: Are you able to do that?

7 MR. ROBERTS: Yes.

8 THE COURT: Any other reason why you
9 could not be seated here?

10 MR. ROBERTS: No, Sir.

11 THE COURT: You are willing to do
12 so?

13 MR. ROBERTS: Yes.

14 MR. BAILEY: No questions.

15 MR. INGRAM: No questions.

16 THE COURT: Mr. Roberts, you are
17 going to be in the pool for this Jury. We would
18 ask you to call that number after tomorrow evening,
19 4:30. Stop down and see Connie downstairs and get
20 those two papers to take with you. We'll be seeing
21 you later.

22 (Juror No. 259, Barry Schecht, entered the Jury room.)

1 THE COURT: We all know you,
2 Mr. Schecht. I remember you from years back. Good
3 afternoon to you. You held your hand up this
4 morning.

5 MR. SCHECHT: I am employed by B.J.
6 Alan Company, the fireworks company. I am in their
7 corporate division, a couple of different levels,
8 and I have a letter from my employer anyway. Our
9 season is 90 days and it is right now through July
10 4th. I have no problem with serving on a Jury and
11 I would only ask if we could continue this until
12 after the 4th. At this time, I am involved in some
13 rather important things that I am working on and my
14 absence would be a real problem for the company.
15 If I could have some consideration, that would be
16 most appreciated.

17 THE COURT: There's no mechanism to
18 continue your possible service. You are drawn for
19 a particular case. So, unfortunately, we can't
20 continue it. Mr. Bailey, why don't you ask
21 whatever questions you want to ask?

22 MR. BAILEY: Let me see your letter.

1 No questions. No problem with excusing him.

2 MR. INGRAM: No questions. No
3 objection.

4 THE COURT: Mr. Schecht, you are
5 excused. We thank you for your time.

6 (Juror No. 263, David Gordos, entered the Jury room.)

7 THE COURT: Mr. Gordos you held your
8 hand up this morning.

9 MR. GORDOS: Yes.

10 THE COURT: What was that
11 concerning?

12 MR. GORDOS: I have a concern about
13 being sequestered. I am on a special diet and I
14 don't think I can have anyone bring in my food if I
15 am sequestered.

16 THE COURT: That would make too much
17 of a problem, you think?

18 MR. GORDOS: Yes.

19 THE COURT: Mr. Bailey?

20 MR. BAILEY: This special diet, you
21 have got to follow that with all three meals?

22 MR. GORDOS: Yes.

1 MR. BAILEY: And you need to eat
2 more often during the day, other than three meals?

3 MR. GORDOS: No, regular three
4 meals. It is just a special diet.

5 MR. BAILEY: You have to personally
6 prepare that at home?

7 MR. GORDOS: Yes.

8 MR. BAILEY: And does it take
9 special types of preparation?

10 MR. GORDOS: Special food. It is
11 organic food. I eat all organic, no pesticides, no
12 additives.

13 MR. BAILEY: That's doctor's orders
14 or do you personally just do that?

15 MR. GORDOS: It is not doctor's
16 orders, it is more my choice, my preference. But
17 so many additives are like aluminum for one, it is
18 supposed to be harmful, so I don't eat foods that
19 have that.

20 MR. BAILEY: I take it then, you
21 wouldn't be able to partake in whatever the other
22 jurors would have in the restaurant?

1 MR. GORDOS: That is right.

2 MR. BAILEY: I take it, would that
3 cause so much concern for you, that, well okay, you
4 wouldn't be able to prepare foods in advance to
5 take them with you if you are sequestered?

6 MR. GORDOS: I'm not sure if I can
7 do that or not. It would be kind of difficult to
8 do. I don't eat in restaurants anymore. There's a
9 few restaurants that have organic food, but not
10 very many. To prepare everything myself ahead of
11 time it would be difficult.

12 MR. BAILEY: Go ahead.

13 MR. INGRAM: None.

14 MR. BAILEY: I have no objection.

15 MR. INGRAM: Neither do I.

16 THE COURT: You are excused. Thank
17 you for your time.

18 (Juror No. 265, Ruby Ramsey, entered the Jury room.)

19 THE COURT: Miss Ramsey, you held
20 your hand up this morning. What was that
21 concerning?

22 MS. RAMSEY: Well, I have rectal

1 bleeding and I'm having a colonoscopy on the 25th.
2 I have to be off the 24th and 25th because I get
3 ready on the 24th, because I can't leave the
4 bathroom.

5 THE COURT: That is right in the
6 middle of when we'll be going.

7 MR. BAILEY: No objection. No
8 questions.

9 MR. INGRAM: No objection. No
10 questions.

11 (Juror No. 285, Nicholas Ewanish entered the Jury
12 room.)

13 THE COURT: You held your hand up
14 this morning.

15 MR. EWANISH: Saying that I would
16 tell the truth.

17 THE COURT: Not that part. When I
18 asked questions about why you might want to be
19 excused. What was that about?

20 MR. EWANISH: The main reason I
21 would want to be excused is my father passed away a
22 few years back. It is just me and my Mom and

1 sister. I take care of most of the chores around
2 the house, any hard work and I can't miss work.

3 THE COURT: Where do you work?

4 MR. EWANISH: Auto Zone. I pay for
5 a little bit more than half of the bills.

6 THE COURT: You don't get paid if
7 you don't work?

8 MR. EWANISH: Not that I know of.

9 THE COURT: I'm sure you probably
10 don't. Mr. Bailey?

11 MR. BAILEY: No questions. No
12 objection.

13 MR. INGRAM: No questions. No
14 objection.

15 THE COURT: You are excused. We
16 thank you for your time.

17 (Juror No. 271, Jean Sprinkle entered the Jury room.)

18 THE COURT: You held your hand up.
19 For what reason this morning?

20 MS. SPRINKLE: I had an aneurysm and
21 I get extremely tired. I always lay down. I would
22 rather not be here if it is possible.

1 THE COURT: Any questions?

2 MR. BAILEY: When you get tired, is
3 that at specific times?

4 MS. SPRINKLE: When I had the
5 aneurysm in the plant, I would work and come home
6 and just lay down. I get such bad headaches, I
7 carry ice with me all the time and I take Ginger,
8 and if I stay up, then I'll start vomiting.

9 MR. BAILEY: And that getting tired
10 can happen even at any time?

11 MS. SPRINKLE: I lay down faithfully
12 every six, eight hours since I had the aneurysm.
13 Before that, I worked like a horse. Since the
14 aneurysm, I am shot.

15 MR. BAILEY: You feel you can't sit
16 on this Jury?

17 MS. SPRINKLE: I think it is very
18 intense. I'm sorry.

19 MR. BAILEY: We have no objection to
20 her being excused.

21 MR. INGRAM: The Defense has no
22 questions and no objection.

1 THE COURT: Take care of yourself.

2 Thank you. You are excused.

3 (Juror No. 282, Sandra Clark entered the Jury room.)

4 THE COURT: You held your hand up
5 this morning in response to one of my questions.
6 What was that about?

7 MS. CLARK: Actually, all of them.

8 THE COURT: Give me a couple.

9 MS. CLARK: My Mom is in the
10 hospital. She's 80 some with pneumonia. I have
11 rheumatoid arthritis. Plus I just got X-rays and
12 I'm probably going to have therapy for sciatic
13 nerve. Sitting like that is really hard I am
14 supposed to go on vacation in May.

15 THE COURT: You got the bases
16 covered.

17 MS. CLARK: Yes.

18 THE COURT: Mr. Bailey, take your
19 pick.

20 MR. BAILEY: I have no questions and
21 I have no problem excusing her.

22 MS. CLARK: The worst is the health

1 thing. That hurts.

2 MR. INGRAM: No questions. No
3 objection.

4 THE COURT: Good luck to you. Thank
5 you for your time. You are excused.

6 (Juror No. 283, Lora Getts entered the Jury room.)

7 THE COURT: You held your hand up in
8 response to some of my questions this morning.

9 MS. GETTS: Only one. I have kids.
10 They come home from school. I don't know if I can
11 get a babysitter.

12 THE COURT: Let me ask you this.
13 Would you be willing to try and if you are
14 comfortable with whatever arrangements you can
15 make, would you consider sitting on the Jury?

16 MS. GETTS: I would if my
17 mother-in-law could watch the kids, but right now
18 she's taking chemotherapy.

19 THE COURT: You don't have anyone
20 else that you could call?

21 MS. GETTS: My mother lives in
22 Rogers. I don't have Day Care. I would love to

1 see how this works and my grandfather was a Judge.
2 It has always been fascinating. With the kids, if
3 they were a little older, yes, but at six years old
4 and ten and 12, I want my house still standing.

5 THE COURT: Do you have any
6 questions?

7 MR. BAILEY: Really, you don't think
8 there's any way you are going to be able to get a
9 babysitter?

10 MS. GETTS: No. The only babysitter
11 I have is in Mahoning County.

12 MR. BAILEY: We have no objection to
13 her being excused.

14 MR. INGRAM: No questions. No
15 objection.

16 THE COURT: You are excused. We
17 thank you for your time.

18 (Juror No. 287, Harold Deraud entered the Jury room.)

19 THE COURT: Harold, you held your
20 hand up this morning. What was that in regard to?

21 MR. DERAUD: You hit me twice, one
22 on the financial problem. My wife said, "How are

1 we going to miss a week's work and still keep up
2 with our bills?" I am retired and I am working on
3 income tax, and then you hit me again on the
4 doctor's appointment. I have one on the 20th and
5 the 21st.

6 THE COURT: That is right in the
7 middle of what we'll be doing here. Any objection
8 to dismissing for cause?

9 MR. BAILEY: No problem.

10 THE COURT: Nobody has a question?

11 MR. INGRAM: No.

12 THE COURT: We thank you for your
13 time. Sorry to keep you here. We couldn't avoid
14 it.

15 (Juror No. 291, Michael Blake, entered the Jury room.)

16 THE COURT: Michael Blake, you held
17 your hand up this morning. What was that
18 concerning?

19 MR. BLAKE: Once when you asked if I
20 watched the news and or read the newspaper, and I
21 raised my hand for that and also the, any medical
22 appointment within the next 30 days, and I said yes

1 to that.

2 THE COURT: Tell us about that, the
3 medical.

4 MR. BLAKE: Just a doctor's
5 appointment.

6 THE COURT: What date, do you know?

7 MR. BLAKE: April 22nd.

8 THE COURT: Is that a, like a yearly
9 check up?

10 MR. BLAKE: It is like -- I go like
11 every three or four months for blood work and he's
12 monitoring my heart for high cholesterol and high
13 blood pressure. I'm taking all of this medication
14 I have to take. I have to get a blood test every
15 three, four months.

16 THE COURT: In regard to the second
17 issue, most of the people out there probably have
18 read something in the newspaper. It is a question
19 of whether you think you have your mind made up as
20 to the facts, or are you able to set that all aside
21 and listen to the evidence, because that is what
22 the case has to be decided on.

1 MR. BLAKE: I could do that.

2 THE COURT: What about this doctor's
3 appointment?

4 MR. BAILEY: With the medication
5 that you are taking, can you push the appointment
6 back to a week?

7 MR. BLAKE: I can change the
8 appointment. That is not a problem.

9 MR. BAILEY: Is it going to affect
10 your high blood pressure and cholesterol? Is it
11 lowered enough with the medication?

12 MR. BLAKE: It is fine. I have to
13 do this blood work every so often.

14 THE COURT: Why don't you leave that
15 on until closer to the time. If it looks like you
16 are going to be tied up for that day, if you are
17 called, then you can change it. Rather than do it
18 now. We have days in between. A lot of times you
19 might not be here. You will be in the pool. Call
20 after 4:30 tomorrow evening, that number. Stop
21 down and see Connie and get those papers off her
22 before you leave today. Thank you very much.

1 (Juror No. 298, Jeffrey Proctor, entered the Jury
2 room.)

3 THE COURT: You held your hand up
4 this morning. What was that concerning?

5 MR. PROCTOR: Financial. I'm self
6 employed and I couldn't take the time off work.

7 THE COURT: What do you do?

8 MR. PROCTOR: Carpenter.

9 THE COURT: You work for somebody?

10 MR. PROCTOR: Yes, a contract off a
11 few companies.

12 THE COURT: You are an independent
13 contractor and you get work, you don't have anybody
14 paying you if you are not working?

15 MR. PROCTOR: Right.

16 THE COURT: Mr. Bailey?

17 MR. BAILEY: No questions.

18 MR. INGRAM: No questions. No
19 objection.

20 THE COURT: Jeff, you are excused.
21 (Juror No. 301, Susan Booth entered the Jury room.)

22 THE COURT: Susan, you held your

1 hand up this morning. What was that in relation
2 to?

3 MS. BOOTH: I got injured about a
4 week ago, and I just can't sit for more than like
5 about 20 minutes without my leg starts going numb.
6 That is really my main reason. I have a doctor's
7 letter here.

8 MR. INGRAM: No questions, no
9 objection.

10 MR. BAILEY: Same.

11 THE COURT: You are excused. Thank
12 you very much.

13 (Juror No. 303, Marilyn Rooks, entered the Jury room.)

14 THE COURT: Marilyn, good afternoon.
15 You held your hand up this morning.

16 MS. ROOK: Basically, I was
17 listening to instructions about facts that have
18 already been known about this case from reading in
19 the newspaper or watching T.V. or media, and I have
20 not only read and followed the case, but I have
21 discussed it with others, and I'm not sure I can be
22 fair. I recognized her as soon as she walked into

1 the Courthouse.

2 THE COURT: You held your hand up --
3 probably, I don't know how many, but eight out of
4 ten out there should have held their hand up. Most
5 people have heard something about the case. It has
6 been kicking around for some time.

7 MS. ROOK: I don't know at what
8 point do you consider --

9 THE COURT: Let me give you the low
10 down on it. That has nothing to do, unless you
11 fixed your mind to the point that the Defendant is
12 either not guilty or guilty and you are not going
13 to bother about listening to evidence. You already
14 have your mind made up. Everybody has, when you
15 read anything you form some impressions, that is
16 natural. But the question you have to ask yourself
17 is, can you set aside all of that because you
18 realize that newspapers are notorious for getting
19 things wrong. Sometimes they get it right, but you
20 never know which is which, so the Jury that is
21 chosen here is going to have to be able to say, "I
22 am starting out fresh here. I'm going to listen to

1 the evidence, and I'm going to decide the case on
2 that evidence. If the evidence comes in different
3 from what I read in the newspaper, that newspaper
4 has nothing to do with it. I got to accept the
5 evidence presented in Court." Now I don't know
6 how -- well, I have no way of looking within your
7 mind.

8 MS. ROOK: I'm greatly influenced by
9 the fact that another person has been already
10 convicted of this, the same charge.

11 THE COURT: I don't find that
12 unusual. But again, I have to point out to you,
13 the duty of the juror is to set things like that
14 aside. It might be at first blush important, but
15 it isn't.

16 MS. ROOK: It is hard to do.

17 THE COURT: Well, some people would
18 find it more difficult than others, I'll give you
19 that. But a lot of times during the course of any
20 trial, there would be a question and answer given,
21 and the Judge turns to the Jury and says, "You
22 disregard both that question and answer, it is not

1 proper evidence." And Juries seem to have a way of
2 setting that aside and deciding the case on the
3 evidence that they have to review. But you have to
4 tell us if you are firmly convinced that you are
5 not able to do that, that is fine and we'll
6 appreciate your honesty.

7 MS. ROOK: I know I could not set it
8 aside.

9 THE COURT: You know that you could
10 not?

11 MS. ROOK: Correct. Sorry. It is
12 one of my biggest faults. I am very stubborn in my
13 opinions and I believe I have already formed one.

14 THE COURT: You are doing what we
15 asked you to do is to tell the truth. Any
16 objections to dismissing? Anybody wish to
17 question?

18 MR. BAILEY: No objection to
19 excusing her.

20 MR. INGRAM: I have a question.
21 This morning while we were all here, did you
22 discuss the case with any of the other prospective

1 jurors?

2 MS. ROOK: No.

3 MR. INGRAM: Did you hear it
4 discussed at all?

5 MS. ROOK: No.

6 MR. INGRAM: I have no other
7 questions.

8 THE COURT: Thank you. You are
9 excused. No further responsibilities.

10 (Juror No. 309, Paul Drotar, entered the Jury room.)

11 THE COURT: Mr. Drotar, you held
12 your hand up this morning. What was that about?

13 MR. DROTAR: Medical. I'm diabetic
14 and I just got out of the hospital passing a kidney
15 stone, and right now I am pretty well chemically
16 dependent on about seven different drugs.

17 THE COURT: You would not feel that
18 you would be able to sit for days on end?

19 MR. DROTAR: At work, I am still
20 having a hard time eating until 9:00. The boss is
21 lenient and I can work over instead of working ten
22 to seven. If you want to work my times, it would

1 be nice. I don't think you want to do that.

2 MR. INGRAM: I think I would.

3 MR. DROTAR: He's been lenient that
4 I can work over that way and miss the time in the
5 mornings, because sometimes the drugs are fine and
6 sometimes they are not. I get nauseated.

7 THE COURT: Are you on insulin, too?

8 MR. DROTAR: Correct. Insulin and
9 another drug for depression and another drug for
10 diabetes. I am on a blood thinner, and a medicine
11 for inactive thyroid. Right now it is a new one.
12 In the afternoons here, I have a tendency to fall
13 asleep.

14 THE COURT: Most of us have that
15 problem.

16 MR. DROTAR: The memory loss, I'm
17 having trouble with memory loss. I think I would
18 have a hard time going back -- I would have to
19 refer back all the time to what is going on in the
20 case.

21 THE COURT: You have outlined a
22 bunch of potential problems.

1 MR. DROTAR: The third one, I met
2 Donna, I don't know if she remembers me, but we
3 closed a loan with her and the fellow that passed
4 away. The home loan when you bought up in Avalon
5 there. I work for American Land Title. That is
6 where I work.

7 THE COURT: Anybody wish to
8 question?

9 MR. INGRAM: No questions. No
10 objection.

11 MR. BAILEY: No objection.

12 THE COURT: You are excused. We
13 thank you for your time. Sorry to keep you so
14 long.

15 (Juror No. 312, Rebecca Pierce, entered the Jury room.)

16 THE COURT: Ma'am, you held your
17 hand up this morning?

18 MS. PIERCE: Yes.

19 THE COURT: And what was the reason
20 for that?

21 MS. PIERCE: There was one point,
22 you said anybody that had a doctor's appointment --

1 I am supposed to be starting some physical therapy
2 for my arm, but I just found this out yesterday
3 when I went to the doctor, but I didn't make any
4 appointment until I came down here today.

5 THE COURT: What happened to your
6 arm?

7 MS. PIERCE: It is numb. I have had
8 an MRI, which didn't show any rotator cuff tear,
9 which is good. So he thinks I have a nerve that is
10 pinched.

11 THE COURT: Is that uncomfortable
12 for you?

13 MS. PIERCE: Very.

14 THE COURT: Mr. Bailey?

15 MR. BAILEY: You say it is
16 uncomfortable, it is numb?

17 MS. PIERCE: From the shoulder to
18 the fingertips.

19 MR. BAILEY: Would that affect your
20 abilities to concentrate on testimony of witnesses?

21 MS. PIERCE: I have been working.

22 MR. BAILEY: You are able to work

1 with it?

2 MS. PIERCE: I have to. I have to
3 support myself and my daughter.

4 MR. BAILEY: Do they pay you from
5 work if you are here?

6 MS. PIERCE: Fifteen working days.

7 MR. BAILEY: That would be three
8 weeks. This case would take two weeks of trial and
9 maybe part of a week if it went to a second phase.
10 Do you think you would be able to survive through
11 that?

12 MS. PIERCE: Sure.

13 MR. BAILEY: Your therapy scheduling
14 would have to be scheduled in the evenings or on
15 weekends.

16 MS. PIERCE: I am assuming I could.

17 MR. BAILEY: You think you might be
18 able to serve?

19 MS. PIERCE: Sure.

20 THE COURT: You would be willing to
21 take on the duties, if called?

22 MS. PIERCE: Yes.

1 MR. INGRAM: I don't know where you
2 are going to get your physical therapy, but I think
3 that Mr. Bailey may be expecting more than the
4 physical therapist is willing to deliver. I don't
5 know that they work after 4:00 or 5:00. Are you
6 going to try to schedule your physical therapy and
7 then let us know?

8 MS. PIERCE: Actually, the first
9 thing I have to do is find out if my insurance
10 company is going to pay for it, because it is quite
11 expensive if I have to pay for it myself. The
12 doctor will have to find some other method if they
13 are not going to pay. I can't afford it.

14 MR. INGRAM: How badly does your arm
15 bother you?

16 MS. PIERCE: I am a nurse. This
17 past weekend I had to pass meds, and pushing the
18 med cart, by the end of my shift, then my arm was
19 pretty numb and felt kind of useless. Sometimes it
20 bothers me at night. I'm not able to sleep very
21 well sometimes at night because of it. I have
22 rested it all day yesterday and all day today, and

1 it doesn't feel too awful bad. Hopefully, a lot of
2 rest would be good for it.

3 MR. INGRAM: Maybe we can arrange
4 for that rest and you could spend some time with
5 us. Is your arm distracting? I think that is what
6 I want to know. Is it something that would
7 distract you from what is going on in the
8 Courtroom?

9 MS. PIERCE: No.

10 MR. INGRAM: No further questions.

11 THE COURT: You will be in the Jury
12 pool. And call that number after 4:30 tomorrow
13 evening. Stop down to see the girl downstairs and
14 get those two forms to fill out and bring back.
15 Thank you.

16 (Juror No. 322, Ellyn Biles, entered the Jury room.)

17 THE COURT: You held your hand up
18 this morning. What was that in reference to?

19 MS. BILES: The finances.

20 THE COURT: Explain that to us.

21 MS. BILES: I am a single mother of
22 two elementary school age kids and I'll get

1 reimbursed from my facility, but it is after I give
2 them the check from here and I cannot afford to go
3 without pay. It is like my mortgage on my house is
4 \$800 a month. I bring home a little over a
5 thousand each pay, which is paid every other week.
6 I am a single mother.

7 THE COURT: It would make it very
8 difficult for you then?

9 MS. BILES: Yes, it would.

10 THE COURT: Mr. Bailey?

11 MR. BAILEY: I don't have any
12 problem with excusing her.

13 MR. INGRAM: Neither do we.

14 THE COURT: You are excused. Sorry
15 to keep you so long.

16 (Juror No. 333, Todd Anerino, entered the Jury room.)

17 THE COURT: Todd, you held your hand
18 up this morning. What was that in reference to?

19 MR. ANERINO: A little bit of
20 personal and financial. My mother, I mean my
21 wife's mother has cancer and she had to quit her
22 job to help take care of her, and I am the only one

1 with the paycheck coming in. It would hurt.

2 THE COURT: You don't get paid if
3 you don't work?

4 MR. ANERINO: Right.

5 THE COURT: Where do you work?

6 MR. ANERINO: Dybrook Products in
7 Lordstown.

8 THE COURT: Mr. Bailey?

9 MR. BAILEY: No questions. No
10 objection to excusing him.

11 MR. INGRAM: No questions. No
12 objection.

13 THE COURT: Todd, you are excused.
14 We thank you for your time today.

15 (Juror No. 337, Susan Somich, entered the Jury room.)

16 THE COURT: Susan, you held your
17 hand up this morning. What was that in reference
18 to?

19 MS. SOMICH: With respect to work,
20 and I know that sounds pretty lame, but I am the
21 only person in my entire office. I don't have
22 anybody that does the same job that I do. I don't

1 have anyone else that fills in for me and I have
2 just recently taken on this position, so I haven't
3 had any experience with having anyone fill in for
4 me. It is not that I don't understand the
5 responsibility that goes along with this
6 opportunity, it is just that I don't know exactly
7 what response is going to lend to my staying there
8 on a long term basis.

9 THE COURT: Where do you work?

10 MS. SOMICH: I work for Wal-Mart in
11 Macedonia, and I work for a district manager. We
12 have eight stores we oversee. There's just me in
13 that office and him, and two weeks coming up of
14 travel, the week of the 21st, which means the
15 office would be left without any assistance. We
16 notify the stores and we have recalls, things of
17 critical nature that they would have to be notified
18 in the event of something like that, so they rely
19 upon me to get that word out to those stores and
20 those employees that work in those stores.

21 MR. BAILEY: If you are not there,
22 what happens to the store?

1 MS. SOMICH: The stores still run if
2 I'm not there to lend assistance. If they have --
3 like a lot of times they will filter information in
4 regards to recalls or customer issues or associate
5 issues through our office, and it is the
6 responsibility through the district manager, and I
7 have to resolve those issues. Somebody in higher
8 authority would have to ultimately make that
9 decision.

10 MR. BAILEY: Do you get paid if you
11 are here?

12 MS. SOMICH: Yes, Sir, I do.

13 MR. BAILEY: That wouldn't be a
14 problem?

15 MS. SOMICH: No.

16 MR. BAILEY: It is not a problem for
17 you, it would be more of a problem for the store?

18 MS. SOMICH: It would be a problem
19 for the store and it -- well, yes.

20 MR. BAILEY: What happens if you
21 were out sick?

22 MS. SOMICH: They would have to --

1 someone would have to step in, but I have worked
2 for Wal-Mart 12 years, I have only had four days
3 off in that length of time.

4 MR. BAILEY: No vacation?

5 MS. SOMICH: Vacation, but not in
6 this particular position. I have only been in this
7 position for a short time. I have worked in a
8 variety of other jobs for Wal-Mart.

9 MR. BAILEY: Not being there, if you
10 were here, that it would affect your ability to
11 concentrate on the evidence, worrying about what is
12 going to happen over there?

13 MS. SOMICH: It would be a big
14 concentration factor for me, only because I would
15 be continually thinking what is piling up there
16 waiting for me once I get back. A lot would depend
17 on the length of time I would be away from that
18 office.

19 MR. BAILEY: We're talking two weeks
20 trial and maybe a couple of days on the second
21 phase.

22 MS. SOMICH: I would have some

1 concerns about what was happening at work, yes.

2 Would I be able to focus my attention on this, yes.

3 And I would say that with respect to the fact that
4 this is a job I have been asked to do and I would,
5 I would give it my full attention.

6 MR. INGRAM: Let me be candid with
7 you. I think we would all love to have you sit as
8 a juror in this case if we could have you sit. As
9 I understand what you are saying, your boss is
10 going on a two week vacation.

11 MS. SOMICH: He's going down -- it
12 is called high string training. He goes to
13 Arkansas for stores that have inventories that are
14 not within limits.

15 MR. INGRAM: He's leaving the office
16 for two weeks to go to a duty assignment?

17 MS. SOMICH: Absolutely.

18 MR. INGRAM: And if you are here and
19 he's at the duty assignment, the office is
20 unattended?

21 MS. SOMICH: Correct.

22 MR. INGRAM: You tell us. Is that

1 something that is such a hardship upon you that we
2 should excuse you?

3 MS. SOMICH: I think that it is
4 that, coupled with when you already start to have
5 some preconceived idea about what is going to
6 unfold as the trial. What am I going to be exposed
7 to, that type thing, it automatically conjures up,
8 am I going to be able to face that kind of evidence
9 and not feel uncertain about it? Everybody goes
10 through that, I know. It is a matter of loyalty
11 and I know that I have a civil responsibility to
12 this, but at the same time, I still have only had
13 that. I don't have any children, I am married, so
14 this is the thing I know, which is going to work
15 and being responsible and so forth.

16 MR. BAILEY: When is he leaving?

17 MS. SOMICH: The 21st.

18 MR. INGRAM: You have lost me now.

19 THE COURT: I think Jerry's question
20 is the proper thing. You tell us. You got a basis
21 to be excused if you want to. If you want to stay,
22 I think everybody would be glad to have you.

1 MS. SOMICH: And given the fact that
2 you gave us that prerogative in saying there's no
3 shame in saying that you don't want to, I would
4 prefer to be excused if I have that option, yes,
5 Sir.

6 THE COURT: Fair enough.

7 MR. INGRAM: No further questions.
8 No objection.

9 MR. BAILEY: No objection.

10 THE COURT: I think Wal-Mart has a
11 good employee. We thank you for your time.
12 (Juror No. 341, Lisa Massary, entered the Jury room.)

13
14 THE COURT: You held your hand up
15 this morning.

16 MS. MASSARY: Yes. Well, I have a
17 doctor's appointment scheduled for the end of the
18 month on April 22nd.

19 THE COURT: Is that something, Lisa,
20 that is a must?

21 MS. MASSARY: I have had -- it took
22 me six weeks to get the appointment.

1 THE COURT: It would be hard to
2 reschedule?

3 MS. MASSARY: Yes.

4 THE COURT: Mr. Bailey?

5 MR. BAILEY: This doctor's
6 appointment, is it like a physical, annual physical
7 or something that needs some immediate care?

8 MS. MASSARY: Immediate care.

9 MR. BAILEY: And would there be any
10 follow up to that?

11 MS. MASSARY: I'm not sure. It
12 depends on what they find at the initial visit.

13 MR. BAILEY: If you were here, would
14 that be on your mind?

15 MS. MASSARY: No.

16 MR. BAILEY: You are the only one
17 who really knows. Do you think you would be able
18 to serve?

19 MS. MASSARY: Yes. I don't want to
20 miss that appointment for that particular day.
21 That is the only day that I would have a problem
22 with.

1 MR. BAILEY: Could you check with
2 the doctor to see if you could reschedule? What
3 time of the day is your appointment?

4 MS. MASSARY: 3:15.

5 THE COURT: How long would it take
6 you to get to the doctor?

7 MS. MASSARY: In Howland.

8 THE COURT: If we broke at 2:45 or
9 3:00, you could conceivably get there? It is up to
10 you folks.

11 MR. JUHASZ: Okay.

12 THE COURT: You will remain in the
13 pool then. We thank you for that. Call that
14 number after 4:30 tomorrow evening and stop and get
15 the papers downstairs. Thank you.

16 MR. INGRAM: If she gets selected,
17 remember to tell us about the doctor's appointment.
18 (Juror No. 345, Sandra Marchionte entered the Jury
19 room.)

20 THE COURT: You held your hand up
21 this morning.

22 MS. MARCHIONTE: You asked did

1 anyone read the news and I do recall seeing it on
2 the news.

3 THE COURT: Is that the only reason?

4 MS. MARCHIONTE: That's the only
5 reason, yes.

6 THE COURT: You understand that most
7 of the people out there, even though many of them
8 did not hold their hands up, they probably all
9 heard or seen something. The case has been around
10 awhile. The important thing is whether you are
11 able to set that aside and listen to the evidence
12 and decide this case on what you hear in the
13 Courtroom. Would you have any problem doing that?

14 MS. MARCHIONTE: No, I would not.

15 THE COURT: That is the only reason
16 then that you held your hand up?

17 MS. MARCHIONTE: Yes.

18 THE COURT: Any questions?

19 MR. BAILEY: No questions at this
20 point.

21 MR. JUHASZ: No, Sir.

22 THE COURT: You will be in the pool

1 then from which this Jury is chosen. Call the
2 number tomorrow evening after 4:30 for further
3 instructions. Stop downstairs and get those two
4 papers to fill out and bring back with you.

5 (Juror No. 357, Linda McCombs, entered the Jury room.)

6 THE COURT: Good afternoon. You
7 heard the questions this morning. You held your
8 hand up. What was that in regard to?

9 MS. McCOMBS: I only get paid for
10 two weeks of Jury duty, get reimbursed, and I
11 really felt that was a hardship.

12 THE COURT: Any other reason you
13 held your hand up?

14 MS. MARCHIONTE: I'm not sure
15 whether I can judge people.

16 THE COURT: Isn't that the real
17 reason you are here?

18 MS. MARCHIONTE: I think it would be
19 very difficult.

20 THE COURT: We all understand that.
21 You are not unusual. You are in the bulk of the
22 people out there. Nobody really wants to say to

1 themselves, "I want to be on a Jury of this
2 nature." The fact is, we have to get 12 people who
3 are willing to sit on any Jury, I suspect. I have
4 no way of knowing, but I suspect that you have the
5 whole gamut of people who favor the death penalty.
6 It runs to the other side, people who don't think
7 it is a very good idea. And maybe that is good.
8 You have a good cross section. But, we have to
9 have the assurance of everybody that they are able
10 and willing to listen to the evidence, and then
11 apply the law, as the law is, and this is a
12 difficult thing at times. These attorneys, myself,
13 many times we're called upon to see that the law is
14 followed when we don't necessarily agree with the
15 law ourselves. It is not uncommon. The law has to
16 be maintained. Would you feel, would it be
17 possible for you to sit and to judge this case on
18 the law, as it is given to you by the Court?

19 MS. McCOMBS: Yes. I'm not
20 prejudiced in any way. I don't know anything about
21 the trial. I don't know anything about it. I have
22 never been involved in anything like this before.

1 THE COURT: You understand that the
2 Jury has to first of all decide the question of
3 guilt or innocence. If they make a finding of
4 innocence or not guilty, then it, the other issue
5 doesn't come up. If it does, you are going to have
6 12 people sitting and they all have their own idea
7 of the death penalty itself in the vacuum, but they
8 have to be able to listen to that second part of
9 the case, and apply the law, wherever that leads
10 you to. Would you feel comfortable that you would
11 be able to do that?

12 MS. McCOMBS: Yes. Well, I don't
13 know.

14 THE COURT: I suspect you don't, but
15 at least you are not telling me no, you could not
16 do it.

17 MS. McCOMBS: No. I feel I could be
18 fair and impartial.

19 THE COURT: There are some people
20 that say I couldn't ever possibly even consider.

21 MS. McCOMBS: I could consider it.

22 THE COURT: Mr. Bailey?

1 MR. BAILEY: Mrs. McCombs, where do
2 you work?

3 MS. McCOMBS: Toys 'R Us regional
4 office.

5 MR. BAILEY: They pay you for up to
6 two weeks?

7 MS. McCOMBS: Yes.

8 MR. BAILEY: This case could be
9 tried in two different phases; the first phase, it
10 deals with guilt or non-guilt and that could take
11 up to two weeks. Your husband works?

12 MS. McCOMBS: Yes, he does.

13 MR. BAILEY: You would be paid for
14 those two weeks, I assume it probably won't go much
15 longer than that, if it goes that long. If it goes
16 to a second phase which deals with the issue of
17 punishment, what is the appropriate punishment, and
18 that probably wouldn't go more than a few days, and
19 it could take longer, but probably not more than
20 two or three days. We can't tell how long the Jury
21 is going to deliberate, because each Jury is
22 different. It could be decided maybe in a day or

1 two days, most likely. If you were to lose two or
2 three days of pay, would that be such an economic
3 hardship?

4 MS. McCOMBS: Not really.

5 MR. BAILEY: You would be able to
6 serve in that case?

7 MS. McCOMBS: Yes.

8 MR. INGRAM: Right after you told us
9 about the hardship, you told us that you thought it
10 might be difficult for you to serve. And then I
11 think we all started jumping to conclusions about
12 we thought you would find it difficult. Do you
13 mind if I ask you what you meant? What do you
14 think you might find difficult?

15 MS. McCOMBS: I think it is hard for
16 any human being to judge another human being. Just
17 would be -- I don't know what to tell you.

18 MR. INGRAM: It is a hard thing to
19 do. Let me tell you this. I think we all want
20 jurors to think it is a hard thing to do. Anybody
21 that comes in here and tells us, "Hey, this is
22 easy, it's a piece of cake," we probably don't

1 want. I have no further questions and I am
2 certainly satisfied.

3 THE COURT: Very good. You will be
4 in the pool from which this Jury is selected. Now
5 there's another procedure, you get another crack at
6 answering these questions, but you should call the
7 number after 4:30 tomorrow evening. Stop and pick
8 up those two pieces of paper to fill out and bring
9 back with you.

10 (Juror No. 373, Daniel Border, entered the Jury room.)

11 THE COURT: Good afternoon. Daniel,
12 you held your hand up today. What is that about?

13 MR. BORDER: I have got to take some
14 stress test, another test the 17th of April, and my
15 boy got in some trouble and I have got to go to
16 Court the 24th with him. I'm kind of stressed out
17 a little bit.

18 THE COURT: Mr. Bailey, do you have
19 any questions?

20 MR. BAILEY: The stress test, that
21 is the 17th, which would be -- well, okay. You
22 think you are going to need follow up from that

1 stress test? It is hard to say?

2 MR. BORDER: I don't know.

3 MR. BAILEY: What about, is there
4 anything else other than that, the stress test?

5 MR. BORDER: No, just I have to go
6 to Court with my boy.

7 MR. BAILEY: He's 19, so he would be
8 an adult. Which Court?

9 MR. BORDER: Niles first. Niles
10 Municipal Court.

11 MR. BAILEY: Was it a felony or
12 misdemeanor?

13 MR. BORDER: Misdemeanor.

14 MR. BAILEY: What time is that set,
15 is that in the morning?

16 MR. BORDER: Yes, Sir, I think it is
17 9:30 in the morning.

18 MR. BAILEY: Do you know what he was
19 charged with?

20 MR. BORDER: Yes, Sir. Resisting
21 arrest, and unruly conduct. He was at Dillard's.
22 Anyway, I have an attorney and I think we're going

1 to be okay.

2 MR. BAILEY: You got an attorney,
3 your attorney could be there with him on that
4 particular day, I take it?

5 MR. BORDER: Yes.

6 MR. BAILEY: Other than that, your
7 stress test will be probably before the trial
8 starts?

9 MR. BORDER: Okay, I thought it was
10 starting right away.

11 MR. BAILEY: We have got to pick a
12 Jury. We're going to be talking to folks for the
13 next week. Other than those two things, do you
14 think you would be able to sit in this case?

15 MR. BORDER: Yes, Sir.

16 MR. INGRAM: No questions.

17 THE COURT: The question I would put
18 to you is, you appear to me to be a little bit --
19 you might be nervous or whatever, you mentioned you
20 were stressed out. Do you feel comfortable, you
21 won't be called upon other than a day, to come in
22 here for 15, 20 minutes during the next two weeks

1 and after that, if you are chosen as a juror, then
2 it would be eight hours a day for whatever time it
3 takes to try the case.

4 MR. BORDER: I have been on Jury
5 duty three other times.

6 THE COURT: You think if you are
7 given the next couple of weeks, you would be in
8 good shape?

9 MR. BORDER: I hope so.

10 THE COURT: We'll keep you in the
11 pool and call that number tomorrow evening after
12 4:30. Stop down and get those two papers to take
13 with you.

14 (Juror No. 374, Carol Dietz, entered the Jury room.)

15 THE COURT: Carol, you held your
16 hand up this morning in reference to one of the
17 questions I asked. What was that about?

18 MS. DIETZ: First I asked about it
19 because of work, but I called there since then to
20 see if I could get off for that length of time, and
21 I guess I can.

22 THE COURT: You can.

1 MS. DIETZ: Yes. But I also don't
2 want to do this.

3 THE COURT: We have had numerous
4 other people make that same comment in one form or
5 another.

6 MS. DIETZ: I don't think I could
7 decide on somebody's life. I couldn't do that.

8 THE COURT: Let me explain this to
9 you. Occasionally, we'll have somebody that
10 believes that fully that they could not make that
11 determination. And that may be based on religious,
12 moral and ethical principles that you do not think
13 it is right for the State to take a life. We're a
14 long way from that in this case. That may never
15 become a contingency. If the Jury makes a finding
16 of not guilty, then that second phase doesn't
17 arise, but if it does, you are going to have a Jury
18 that has the broad spectrum of opinions about the
19 question in a vacuum of the death penalty itself.
20 You will have some people who think it's a good
21 idea when anybody is killed, you are going to think
22 somewhere in between. But every person on that

1 Jury has to look at the evidence and take the law,
2 and apply the law in order for both sides to have a
3 fair Jury. Now, if you are of a mind that you
4 could not follow the law, then that is fine. But
5 it is a question of whether you can follow the law
6 or not. Because a lot of times people will say to
7 themselves, yes, I think the death penalty is a
8 good idea, but if they sat on a particular Jury,
9 they might find, well, in this case, maybe I'm
10 going to change my opinion here. Maybe it
11 shouldn't be imposed in this case. You don't know
12 until you have heard all of the evidence. The only
13 thing nobody else wishes to do is put you in a
14 position where if you do have a deep seated feeling
15 against the imposition of the death penalty, then I
16 would like to see you put in the position where you
17 might have to consider that, but only you can
18 answer that.

19 MS. DIETZ: Well, I don't know.
20 Really I have high blood pressure, and I don't know
21 that I could handle that, the whole thing.

22 THE COURT: The whole thing just

1 kind of frightens you a little bit?

2 MS. DIETZ: Yes, it does.

3 THE COURT: Ken, any questions?

4 MR. BAILEY: You are indicating that
5 the high blood pressure, you think the stress of
6 the situation, being on this Jury --

7 MS. DIETZ: I think it would be very
8 stressful.

9 MR. BAILEY: You think it would
10 adversely affect your health?

11 MS. DIETZ: I do.

12 MR. BAILEY: You are the only person
13 who really knows. If it is a health matter, the
14 stress of this situation, just being here on this
15 Jury and being forced to come to grips with the
16 situation where you may have to make a decision
17 under the law, that it may go against your personal
18 beliefs or religious beliefs, where that may
19 exacerbate your blood pressure, we don't want to
20 make you sick over this. You are the only one who
21 can tell us if you think it would be a medical
22 condition, where you would be really unable to

1 serve, you could tell us.

2 MS. DIETZ: I think it would be very
3 stressful.

4 MR. BAILEY: It would adversely
5 affect your health?

6 MS. DIETZ: Probably. Probably my
7 blood pressure, I'm sure.

8 MR. BAILEY: Are you saying it would
9 make you unable to serve on this Jury, physically?

10 MS. DIETZ: Probably not serve, but
11 I think it would be very stressful for me.

12 MR. INGRAM: Ma'am, I think what you
13 are telling us, and I am way down at the end of the
14 table and I could be wrong, was that, is that you
15 think that this is going to be so stressful for you
16 personally that serving on this Jury would be a
17 hardship for you personally?

18 MS. DIETZ: True.

19 MR. INGRAM: Am I correct?

20 MS. DIETZ: True.

21 MR. INGRAM: We can't answer that
22 question. Only you can answer the question, and if

1 you think that this is going to be a hardship on
2 you, you tell us that.

3 MS. DIETZ: I do believe that.

4 MR. INGRAM: Then I am satisfied.

5 MR. BAILEY: I am, too.

6 THE COURT: Carol, thank you for
7 your time. Sorry to keep you all day here. We
8 appreciate it. You are excused.
9 (Juror No. 378, Neil Countryman, entered the Jury
10 room.)

11 THE COURT: You held your hand up
12 this morning. What was that in regard to?

13 MR. COUNTRYMAN: Travel. I travel
14 for my job for a living and I want to be honest
15 with you, you asked if you had any travel plans. I
16 take care of Cleveland and Pittsburgh in my travel
17 work.

18 THE COURT: Where do you stand, if
19 you are required to be here two weeks and then
20 another week, within the next week, two or three
21 days?

22 MR. COUNTRYMAN: I believe that

1 actually I'm probably one of the better jurors that
2 you are looking for. I don't think you are going
3 to excuse me today because I raised my hand in
4 honesty to tell you that I do travel for a living.
5 Because I travel, I don't read the local news. I
6 haven't read a local paper for years. I kind of
7 fit in what you are looking for in all honesty. I
8 raised my hand because I do travel for a living.
9 It doesn't mean I can't cancel my trip to fill my
10 need here.

11 THE COURT: You would be willing to
12 serve?

13 MR. COUNTRYMAN: My company is not
14 so great on the idea, but as a citizen, yes.

15 THE COURT: If you found yourself on
16 the Jury and you found that there was some piece of
17 evidence presented and you would say to yourself,
18 you say, "I did read a newspaper back and I
19 remember something about this." Are you able to
20 put that out of the your mind and decide this case
21 only on the evidence?

22 MR. COUNTRYMAN: Yes, Sir. I

1 believe I can. I am almost 50 years old. I have
2 seen a lot of things. I have got a pretty good
3 outlook and opinion on life and I like to set my
4 own opinions.

5 MR. BAILEY: No questions.

6 MR. JUHASZ: No questions.

7 THE COURT: Neil, you will be in the
8 pool. Call that number that was given to you after
9 4:30 tomorrow evening. Stop down and see Connie
10 and get those two forms to fill out and bring back
11 with you.

12 (Juror No. 382 Lisa Persons, entered the Jury room.)

13 THE COURT: We have Lisa Persons,
14 No. 382. You held your hand up this morning. What
15 was that about?

16 MS. PERSONS: I asked the lady
17 actually, because I have really low sugar. If I
18 don't eat many times a day, I'll pass out. I have
19 to eat breakfast, snack, lunch, snack.

20 THE COURT: You can take a candy
21 bar, whenever you eat it.

22 MS. PERSONS: But I didn't know if I

1 was allowed. That is why I stayed. I was going to
2 leave earlier, but she said to stay and ask you.

3 THE COURT: That is no problem as
4 far as the Court is concerned.

5 MS. PERSONS: I can have snacks up
6 there?

7 THE COURT: We have accommodated
8 many things like that. Any other reason why you
9 couldn't sit here?

10 MS. PERSONS: No. That is the only
11 reason.

12 THE COURT: You will be in the pool.
13 Call that number after tomorrow evening.
14 (Juror No. 383, Donald Meszaros entered the Jury
15 room.)

16 THE COURT: What is the reason you
17 held your up your hand this morning?

18 MR. MESZAROS: I have work related
19 reasons. I was off, I have suffered a heart
20 attack. I was off three months and I just
21 returned. My employer doesn't think I could afford
22 to miss another month or two.

1 THE COURT: Where do you work?

2 MR. MESZAROS: Western Reserve
3 Transit. I'm director of transit.

4 MR. BAILEY: We have no problem
5 excusing him.

6 MR. JUHASZ: No problem.

7 THE COURT: Don, you are excused and
8 we thank you for your time. Sorry to keep you all
9 day.

10 (Juror No. 388, Juan Scott, entered the Jury room.)

11 THE COURT: Mr. Scott, you held your
12 hand up this morning. What was that about, the
13 reason why you thought you might not be able to
14 serve?

15 MR. SCOTT: Well, several different
16 reasons. I'm taking care of an elderly parent, and
17 also, I have a reconstructive knee surgery that I
18 just went through March 3rd, last month, and that
19 is basically it.

20 THE COURT: You had knee surgery?

21 MR. SCOTT: Yes.

22 THE COURT: Do you have trouble

1 sitting?

2 MR. SCOTT: For long periods of
3 time. For what you are expecting, it would be
4 somewhat difficult.

5 THE COURT: You say you care for an
6 elderly parent?

7 MR. SCOTT: Yes.

8 THE COURT: Explain about that.

9 MR. SCOTT: She's just an elderly
10 woman. She's an 80 year old woman. She's elderly.
11 She's independent. She's not like bed ridden or
12 anything like that.

13 THE COURT: Where do you work?

14 MR. SCOTT: I don't. My knee -- I
15 used to do construction landscaping.

16 THE COURT: Are you there with your
17 Mom most of the day then to take care of her?

18 MR. SCOTT: No, not most of the day.

19 MR. BAILEY: If you had to be
20 sequestered for a couple of days, you wouldn't be
21 there to take care of her. That would cause a
22 hardship?

1 MR. SCOTT: I have other siblings.
2 I have other brothers and sisters, but it is just
3 that she stays with me.

4 THE COURT: You are the primary care
5 giver?

6 MR. SCOTT: Yes, I can make
7 arrangements for her to have -- my other brother
8 and sister.

9 MR. BAILEY: If you are here for two
10 weeks and then maybe half a week, that would cause
11 a problem with the rest of the family?

12 MR. SCOTT: No. My orthopedic
13 surgeon, I'll talk to him about it. I have a
14 doctor's appointment, but I can make arrangements
15 to see him during the daytime, whenever Court would
16 convene, I could see him during the daytime or
17 after.

18 MR. BAILEY: The Court goes in the
19 daytime from like nine to 4:30.

20 MR. SCOTT: His office is open at
21 8:00 in the morning. I could see him in the
22 morning. There's ways of getting around that.

1 THE COURT: What you're telling us,
2 if I understand correctly, is that you are willing
3 to serve. There's no reason why you can't?

4 MR. SCOTT: There's no reason why I
5 can't. I'm trying to say my situation. I can
6 serve.

7 THE COURT: You can work around
8 that?

9 MR. SCOTT: Yes.

10 THE COURT: You don't think if you
11 are seated, you are going to have anything come up
12 because of these various potential problems that
13 would be on your mind while you are sitting on that
14 Jury?

15 MR. SCOTT: My mind would be clear.
16 It wouldn't be like my mind wouldn't be on anything
17 else except for serving this Court.

18 THE COURT: Fair enough.

19 MR. INGRAM: I only have one
20 question. You have just had knee surgery?

21 MR. SCOTT: Yes.

22 MR. INGRAM: How is it going?

1 MR. SCOTT: Well, first of all it is
2 going along pretty good. It is coming along faster
3 than I expected for a reconstruct. I don't have
4 crutches, no strong pain.

5 MR. INGRAM: Are you able to sit
6 with your leg bent for like an hour and a half at a
7 time?

8 MR. SCOTT: I have been out there
9 all day except for the time we were standing and
10 the remainder of the time we were sitting. I am
11 sitting now.

12 THE COURT: Any problems?

13 MR. INGRAM: No.

14 THE COURT: Mr. Scott, you are going
15 to be in the pool. Call that number that will be
16 given to you, if you haven't got it already, after
17 4:30 tomorrow afternoon for instructions, and then
18 stop down and see Connie today and get those two
19 forms to fill and bring back.

20 (Juror No. 390, Kathryn Carr entered the Jury room.)

21 THE COURT: Kathryn, you held your
22 hand up this morning. What was that concerning?

1 MS. CARR: First of all, I take care
2 of my mother. She has Alzheimer's and then I'm a
3 the sole provider at home right now. I don't get
4 paid for being here.

5 THE COURT: How long has she had
6 Alzheimer's?

7 MS. CARR: Diagnosed three or four
8 years ago.

9 THE COURT: You are the primary care
10 giver?

11 MS. CARR: My Dad takes care of her.
12 I help him. He's 80.

13 MR. BAILEY: No questions. Sorry
14 for your situation.

15 MR. INGRAM: No questions. No
16 objection.

17 THE COURT: Kathryn, you are going
18 to be excused. We thank you and I'm sorry to keep
19 you here all day.

20 (Juror No. 393, Sandra Gillespie, entered the Jury
21 room.)

22 THE COURT: Good afternoon. You

1 held your hand up this morning. What was that
2 about?

3 MS. GILLESPIE: I followed the
4 story. I live in Howland. It was close to home
5 where it happened. That is why. You said if
6 anybody had followed the story, that is why I
7 raised my hand.

8 THE COURT: Let me ask you this. Do
9 you have your mind made up about anything?

10 MS. CARR: No.

11 THE COURT: You read the stuff in
12 the newspaper, perhaps saw something on T.V. That
13 is not evidence. Evidence has to be given in the
14 Courtroom. Some people might have pretty much
15 their mind made up, from I read it in the
16 newspaper, must be something to it. You have to be
17 able to sit on the Jury and say to yourself, "I
18 didn't read anything or what I did, it is not
19 important here. I have to listen to all the
20 evidence and then make my own judgment on the
21 facts."

22 MS. CARR: Right.

1 THE COURT: Are you in the position
2 where you feel you can do that?

3 MS. CARR: I don't know. I have no
4 idea.

5 THE COURT: That is a better answer
6 than saying yes right out. That is not uncommon
7 for someone to think that. Very few people say
8 that, but you have to examine within yourself,
9 because you have to decide if both sides are to get
10 a fair trial. You have to decide on what happens
11 in the Courtroom not what some newspaper said.
12 That wouldn't be fair to anybody. Newspapers are
13 wrong many times. Some people may not be able to
14 set aside what they read. I don't know which type
15 you are, you do.

16 MS. CARR: You know what has worried
17 me, because it was close to home and wasn't far
18 from where I live. I heard about it and people
19 talk. Howland Giant Eagle, everybody talks.

20 THE COURT: You are in a different
21 situation that you heard it in the neighborhood.

22 MS. CARR: I work in Howland, I live

1 in Howland. People talk. I would have to say I
2 can't talk about it.

3 THE COURT: Because of where you
4 live alone makes you more apprehensive than maybe
5 somebody else would be?

6 MS. CARR: Yes.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: No questions.

9 MR. INGRAM: Would you be satisfied
10 with a juror who has been exposed to the things
11 that you have been exposed to about your case?

12 MS. CARR: No.

13 MR. INGRAM: Do you think that it
14 would be better that you be excused?

15 MS. CARR: I would think so, yes.

16 MR. INGRAM: And that is because you
17 would find it difficult to remove from your mind
18 some of your perceptions, or your conclusions from
19 what you have seen, read or heard?

20 MS. CARR: Yes, I have a tendency to
21 do that. I remember flashback, "I heard that.
22 That person told me that."

1 MR. INGRAM: No objection.

2 THE COURT: Sandra, you are excused
3 for cause. We thank you for your time.

4 (Juror No. 395 John Marsco, entered the Jury room.)

5 THE COURT: Good afternoon, John.
6 You held your hand up this morning. What was that
7 about?

8 MR. MARSCO: I am very good friends
9 with the Assistant Prosecutor, Chris Becker. He
10 lives in Cortland. I'm changing my job at work,
11 rotating jobs, and I am the only one with an income
12 in my family. I don't think it would be fair to
13 Miss Roberts, knowing the Assistant Prosecutor and
14 that I could be fair to both parties.

15 THE COURT: Any objection to
16 dismissing for cause?

17 MR. BAILEY: No objection.

18 THE COURT: We thank you for your
19 time. Sorry to keep you so long. You are excused.
20 (Juror No. 398, James Ziegler, entered the Jury
21 room.)

22 THE COURT: Mr. Ziegler, you held

1 your hand up today?

2 MR. ZIEGLER: The reason I held my
3 hand up is that blood pressure medicine that I am
4 taking causes me to go to the restroom quite
5 frequently. I know being a juror, you can't just
6 keep popping up like that. That is the reason why
7 I raised my hand.

8 THE COURT: Ken, any questions?

9 MR. BAILEY: When you say
10 frequently, more than every hour and a half or so?

11 MR. ZIEGLER: Yes.

12 MR. BAILEY: Maybe every 15 minutes?

13 MR. ZIEGLER: Yes, Sir.

14 MR. BAILEY: No problem with
15 excusing him.

16 MR. INGRAM: No objection.

17 THE COURT: You will be excused. We
18 thank you for your time. For the record, we have
19 spent the day going through the people who held
20 their hand up this morning with potential problems.
21 We have completed that. For the record, I would
22 note that the following people failed to appear

1 after being subpoenaed in. Number five, Yvette
2 Bonner; Valentheia Mitchell, 14. Kristen Lodwick,
3 number 15. Matthew McCrimmon, number 21. George
4 Dermer, number 22; Dino Ziccardi, Junior, number
5 28. Matt Vigus, number 70; Mary Hall, number 104.
6 Thelma Rankin, number 117; Donald Byerly, number
7 132. Rodger Killingsworth, number 135; Robin
8 Schlaegel, number 137. Norma Calhoun, number 149;
9 Gary Driscoll, number 175. Margaret Kay, number
10 248; Lee Silvis, number 256; John Langley, number
11 261. John Vance, number 262. Michael -- no, not
12 Michael. Judy Rees, number 296; Danny Thomas,
13 number 304. Larry Bequeath, number 318; Richard
14 Long, number 347. John Gates, number 364; Carla
15 Daniel, number 367. Katherine Kellar, number 372;
16 Eugene Malandro, number 377. Vonetta Cato, number
17 392.

18 It is my understanding that the Defendant
19 and the Prosecution both do not wish to have the
20 Court issue further process to try and bring these
21 names in, these people; is that correct?

22 MR. JUHASZ: That is correct, but

1 before we agree to that, could I point out for
2 clarification, the Court read three names that
3 according to my list are circled, I presumed that
4 they were here. Specifically, number 22,
5 Mr. Dermer; I have circled, number 135,
6 Mr. Killingsworth, is circled on my list, and
7 number 137, Miss Schlaegel. Those are circled on
8 my list.

9 THE COURT: They are circled on
10 mine, too. Did I not read any that were not
11 circled?

12 MR. JUHASZ: No. with the exclusion
13 of those three names that we agree that those
14 people do not need to appear and process need not
15 be issued.

16 MR. INGRAM: If I may just put on
17 the record from the Defense's prospective, the
18 jurors who were not here were not present for the
19 preliminary instructions, the orientation
20 instructions, or the cautionary instruction.
21 Additionally, they did not receive a copy of the
22 questionnaire. And at this time, I don't think it

1 would serve any good purpose to bring them in.
2 Accordingly, we would just consent to their
3 excusal.

4 MR. BAILEY: We would, too.

5 THE COURT: Very good. So
6 stipulated. I thank you for checking my work
7 product. It is very necessary. Nothing further.
8 That completes the record for the day. We'll start
9 Thursday afternoon at 1:00.

10 (Court in recess at 5:00 p.m.)
11
12
13

14 Wednesday, April 9, 2003; In Open Court at 10:25 A.M.

15 (Juror No. 117, Thelma Rankin, and Juror No. 248,
16 Margaret Kay, entered the Courtroom.)

17 THE COURT: Good morning. Yesterday
18 we had several hundred people in here that were
19 subpoenaed in on this particular case which is
20 State of Ohio versus Donna M. Roberts. We're about
21 to begin the process known as Voir Dire. That is a
22 term that comes from the old common law Courts of

1 England. It means to speak the truth. That is the
2 process by which the Jury is selected. This being
3 a capital case, there's a whole different procedure
4 that is used to choose a Jury. Ordinarily we have
5 30 or 40 people come in from a panel of jurors on
6 an ordinary felony case. There's the potential in
7 the case before us where the Jury may be called
8 upon to go into a second phase because the death
9 penalty is a possible final conclusion that a Jury
10 might arrive at.

11 If after the trial the Defendant were
12 found not guilty, then that second phase would not
13 come up. No one knows at this point what the
14 evidence will show and what the Jury's decision
15 will be.

16 Now the attorneys for the State and the
17 Defendant will ask you questions concerning your
18 qualifications to serve as a juror. At this point,
19 we only know that you are citizens of Trumbull
20 County and that you vote. That is the way we got
21 your name.

22 You should understand that although it is

1 your duty as a citizen to serve on a Jury, it is
2 also your duty as a citizen not to serve on a Jury,
3 if there's any reason whatsoever why you cannot do
4 so in fairness to the State, to the Defendant and
5 to yourself. What is important is that you be as
6 honest as you can be in your response to questions
7 put to you by the Court and the Attorneys. You
8 cannot give a right or wrong answer on Voir Dire.
9 The only proper answer is a totally honest one. It
10 would be terrible to have a person sit on a Jury,
11 particularly of this type, if you would be called
12 upon to do something that was totally against the
13 grain of what your religious or moral beliefs are.
14 You are not here to be judged, and you will not be
15 judged.

16 It should not be an embarrassment to you
17 in any way, if you are excused in this case. Many
18 of you will be. That is part of the whole process.
19 People are excused in most cases for one reason or
20 another. And just because you might be excused on
21 this particular matter does not mean that you could
22 not serve on some other Jury. If you are excused,

1 it will probably mean that you have been honest and
2 forthright in your answer as to what your feelings
3 are.

4 Now in this case, Donna M. Roberts is
5 charged with aggravated murder with specifications.
6 As in all such cases, one possible penalty is the
7 death penalty. Because of that possibility, it is
8 necessary that counsel ask you certain questions
9 about your views regarding the death penalty. The
10 death penalty is an issue about which people have
11 varying opinions. Some favor it, some oppose it,
12 and there are strong arguments to both sides of the
13 issue. You will be asked your opinion, and I urge
14 you to be as candid and honest as you can be in
15 your answer.

16 Now the questions the lawyers will be
17 asking you are asked in every aggravated murder
18 case where there's specifications. The law
19 requires that such questions be asked of you. And
20 the inquiry has no relation whatsoever as to
21 whether or not Donna M. Roberts is guilty or not
22 guilty of the offense. As she will sit in this

1 Courtroom before this Jury, throughout the trial,
2 she's presumed innocent. It is the right that
3 every person has, as is the presumption of
4 innocence, unless and until the State is able to
5 prove by evidence beyond a reasonable doubt the
6 person is guilty, they are innocent.

7 Now because we'll only have the
8 opportunity of questioning you regarding your
9 feelings about the death penalty at this stage of
10 the trial before the State produces any evidence
11 about whether the Defendant is guilty or not, I
12 must caution you that you should not conclude that
13 just because the attorneys are asking you about a
14 possible death penalty, that that has any bearing
15 whether or not Donna M. Roberts is guilty or not.
16 You understand that? Do you have any questions
17 about that?

18 As you know, this is a capital case and
19 that is a case where the death penalty and the life
20 imprisonment are potentially sentencing options.
21 Now there are common misconceptions as to the
22 procedure in such a case. And this preliminary

1 instruction is designed to help you eliminate any
2 misconceptions that you may hold.

3 The trial of a capital case may be, but
4 is not necessarily a two stage process. The issue
5 in the first phase of the trial is the same as in
6 any other criminal trial, and that is the Jury will
7 be called upon to decide whether Donna M. Roberts
8 is guilty or not guilty. In the event that the
9 State satisfies the Jury by proof beyond a
10 reasonable doubt that the Defendant's guilt on
11 either charge of aggravated murder and/or guilt on
12 the specification attached to that count was
13 committed, in which case they would have proven the
14 aggravated murder was committed during the course
15 of an aggravated robbery or aggravated burglary.
16 If they prove both of those factors in either
17 count, this case would go onto a second phase. If
18 the case does not, does proceed to a second phase,
19 as I said they return a not guilty, it wouldn't go
20 to it. If it does go to a second phase, the Jury
21 would be called upon to determine the appropriate
22 punishment. At that time, you would be called upon

1 to determine which of four sentencing alternatives
2 should be imposed. And the sentencing alternatives
3 are one, death by lethal injection; two, life
4 imprisonment without any opportunity of parole.
5 Three, life imprisonment with parole eligibility
6 only after 30 years. Four, life imprisonment with
7 parole eligibility only after serving 25 years.

8 Now there's a common misconception that
9 upon a finding of guilty on a charge of aggravated
10 murder with a death specification, that the Jury
11 must sentence a Defendant to death. That simply is
12 not correct. The death penalty is only one of four
13 possible penalties. And the Jury must fairly
14 consider by following the instructions of law
15 whether life imprisonment as well as the death
16 penalty or instead of the death penalty should be
17 imposed.

18 If this case does proceed to a second
19 phase, you should enter the second phase with an
20 open mind, not favoring the imposition of one
21 penalty over the other. The Jury will be called
22 upon to separate the two in their mind. Make a

1 finding of guilt or not guilty, and then you have
2 to weigh certain things in the second part.

3 If you do have to decide upon a sentence,
4 your decision will be made, will not be made in a
5 vacuum. On the second trial, it is reasonable to
6 question what do we decide there. At that time, I
7 would instruct you to weigh or balance what the law
8 calls aggravating circumstances. Those are facts
9 which the State claims justifies the imposition of
10 the death penalty.

11 You weigh those aggravating circumstances
12 against certain mitigating factors. Those are
13 positive things brought out by the Defendant as to
14 why the death penalty should not be imposed. At
15 that time, I would more fully describe what is
16 meant by aggravating circumstances and mitigating
17 factors. You would further be instructed that the
18 burden would be upon the Prosecuting Attorney, the
19 burden is always on the Prosecuting Attorney to
20 prove to you beyond any reasonable doubt that the
21 aggravating circumstances outweigh the mitigating
22 factors, and that death is the appropriate

1 sentence. Only if the Prosecutor were to meet that
2 burden of proof and firmly convince you that the
3 aggravating circumstances outweigh the mitigating
4 factors, would the law require a verdict of death
5 by lethal injection.

6 On the other hand, if the Prosecutor did
7 not convince you that the aggravating circumstances
8 outweighed the mitigating factors beyond a
9 reasonable doubt, the law would require the
10 imposition of one of the life sentence options.
11 Each of the sentencing options is entitled to equal
12 consideration in the event this case does proceed
13 to a second phase. And a juror should not
14 automatically favor imposition of one over the
15 other.

16 Let me caution you once again that
17 neither this preliminary instruction or the
18 procedure in a capital case, nor the questions of
19 the Court or counsel regarding your views on
20 capital punishment has any bearing upon the
21 ultimate question of the guilt or innocence of
22 Donna Roberts. She's presumed innocent. And you

1 must test the evidence presented by the State in
2 this case as you would in any other case, to make
3 that determination.

4 Are either of you planning any vacations?
5 This case will take place, various portions of it,
6 during the next month or so. And that doesn't mean
7 you are going to be here all that time. The next
8 couple of weeks will be taken up by having four or
9 five people each morning and afternoon come in out
10 of the entire Jury pool. We go through a process
11 primarily to see if the person is able to sit on a
12 Jury. That usually takes a week and a half to two
13 weeks. We'll be going for 36 people.

14 MR. BAILEY: I think we need 32 plus
15 two to be safe. I think we have agreed on 34.

16 MR. JUHASZ: With the challenges, we
17 need 32 and with two more it would be safe.

18 THE COURT: After we have a pool of
19 32 people from that point, the trial proceedings,
20 like an ordinary case where we bring all of that
21 pool of people in. We put the first 12 in the box
22 by their numbers and then we go through the

1 ordinary Voir Dire, asking questions about this,
2 that and another.

3 The question that you have to answer
4 today is do you have anything in the future that
5 you know about that would interfere with your being
6 able to participate in this process. Vacations,
7 medical problems, children, work schedules? Are
8 you self employed? Any reason that you could not
9 sit through this trial and not have some outside
10 influence on your mind? Neither of you have any
11 problems with that?

12 MS. RANKIN: I don't.

13 MS. KAY: I don't.

14 THE COURT: Yesterday we went
15 through 80 people and there was every reason under
16 the sun that people can't be here and most of them
17 are legitimate, I'm sure. Mr. Bailey?

18 MR. BAILEY: There's a questionnaire
19 that they are going to have to pick up and fill
20 out.

21 THE COURT: Do you have any
22 questions you want to ask?

1 MR. BAILEY: Not at this time.

2 MR. JUHASZ: No.

3 THE COURT: By the way, this is
4 Mr. Ken Bailey. He's our Prosecutor and Attorney
5 on this matter. This is John Juhasz, the Defense
6 Counsel. There's another Attorney, Defense
7 Attorney by the name of Jerry Ingram, that will be
8 with Mr. Juhasz. Two attorneys are required to
9 represent a Defendant on a case of this nature.
10 They have to be what the State refers to as death
11 qualified. They have to take special training and
12 to be certified by the Ohio State Supreme Court
13 before they are permitted to defend a person in a
14 case of this magnitude.

15 Mr. Bailey is a Prosecutor of many years
16 training, and with him will be Attorney Chris
17 Becker, who is also with the Prosecutor's Office.
18 All of these gentlemen are very well qualified to
19 handle a matter of this nature. In fact, they keep
20 the Judge hopping to keep up with them sometimes.

21 We're going to release you at this time.
22 I would ask you to stop downstairs and see Connie,

1 very nice lady. If you have any problems during
2 the trial, talk to Connie. This is Mary Ann Mills,
3 our Court Reporter. Talk to Mary Ann, she's always
4 got an open ear, and Laurie Brown is our bailiff.
5 She's not in here right now. If you have any
6 problems, address them. There are two forms you
7 are to pick out down there to fill out and bring
8 back with you. You should call that number that
9 was given to you this evening after 4:30. You will
10 be on panel S. So when you call in, you listen for
11 that instruction. Is there anything else?

12 MR. JUHASZ: The only thing I can
13 think of is the standard admonition concerning
14 information about the case.

15 THE COURT: Very important. I place
16 you under the admonition at this point that you are
17 not to discuss anything about this case with
18 anyone. Allow no one to talk with you. And it is
19 very important that you not read anything in the
20 newspapers or watch anything on T.V.

21 This type of case always engenders a lot
22 of publicity. And I like to condemn the

1 newspapers, but I have no right to do that. They
2 are doing a job and a very necessary job. But it
3 can become very detrimental to seeing that a fair
4 trial is allowed to occur. Not always on the part
5 of the Defense. Cases where the State doesn't have
6 a fair trial, because of adverse publicity of one
7 sort or another, although it usually works against
8 the Defendant. And you will be asked about whether
9 you have read anything about this and most of the
10 people that are on this Jury panel, I'm sure have
11 read something or heard something about it. It has
12 been around for awhile, and has gotten a lot of
13 publicity, and the point is that a person should
14 not be tried in the newspapers. There's no way to
15 test the facts that are presented. The case has to
16 be decided, if it is going to be done fairly, on
17 the evidence that is received in this Courtroom.
18 If we have jurors who, when they get back in that
19 Jury room, start saying things like, "Well, I read
20 in the paper and that doesn't agree with -- I
21 believe the paper." Somebody isn't going to get a
22 fair trial. You have to make your decision based

1 on the evidence you hear in this Courtroom. I feel
2 comfortable that most people are able to do that,
3 but I would caution you to not find out anything
4 more about this case.

5 You will be given everything necessary at
6 the proper time by way of evidence. That is the
7 only thing that we all try to do here is give both
8 sides a fair trial. The State as well as the
9 Defendant is entitled to a fair trial, but the
10 Defendant is the one that we most ordinarily think
11 of as not getting a fair trial or getting a fair
12 trial, but it works both ways.

13 Laurie, would you give these ladies the
14 oath?

15 THE BAILIFF: Do each of you swear
16 to truthfully answer the questions put to you by
17 this Court and by Counsel of record in this case,
18 acting upon your qualifications to act as jurors.

19 MS. RANKIN: I do.

20 MS. KAY: I do.

21 THE COURT: Do you have any
22 questions, ladies?

1 MS. KAY: We filled out a
2 questionnaire when we came in. Do these gentlemen
3 get that?

4 THE COURT: Yes. And there's
5 another form that we want you to fill out. The
6 reason I stress that point so much is we have had a
7 couple of cases where the whole matter has gotten
8 sidetracked because of the jurors not following
9 that instruction. We had one case that in fact,
10 Mr. Juhasz was on it, we ended up going to
11 Ashtabula County. Had to have a change of venue,
12 and part of the reason for that was the misconduct
13 of some jurors. I gave the instruction a couple of
14 times and somebody, there were several of them
15 sitting out here waiting to go back into the Jury
16 room so we could question them further. They are
17 talking about the case. It is most important part
18 to not discuss it. When you are with the other
19 jurors during the trial, you go to lunch or
20 something together, it is only natural that you
21 want to talk about what you have heard during the
22 day, but you can't do it. It just can't be done.

1 Keep that in mind. You are released until you are
2 notified by that recording to come back in. We
3 thank you very much for appearing also.

4 (Jurors Ms. Rankin and Ms. Kay excused.)


5 THE COURT: Do we have any loose
6 ends before we start tomorrow?

7 MR. JUHASZ: I am waiting until now,
8 although we discussed in-chambers that we would do
9 this for purposes of this limited discussion, I
10 would waive the appearance of the Defendant, and
11 also I spoke with Mr. Ingram and Mr. Bailey this
12 morning. Mr. Ingram was on his way here, but
13 couldn't be here by the time we wanted to start to
14 avoid further inconveniencing these jurors, so I
15 would ask that his presence likewise be waived.

16 THE COURT: I appreciate that.
17 (End of hearing at 10:50 A.M.)
18
19
20
21
22

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO) VOLUME III
5 Plaintiff))
6 - vs -) MOTION FOR CHANGE OF VENUE
7) INDIVIDUAL VOIR DIRE
8 DONNA M. ROBERTS))
9 Defendant)

10 BE IT REMEMBERED, that on Thursday, April 10,
11 2003, and Friday, April 11, 2003, these proceedings
12 came on to be heard before one of the Judges of this
13 Court, John M. Stuard, in Courtroom No. 2, on High
14 Street, Warren, Ohio, before the case heretofore
15 filed herein.

16
17
18 Mary Ann Mills, RPR
19 Official Court Reporter
20 Trumbull County, Ohio
21
22

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I N D E X

VOLUME III:

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1 Thursday, April 10, 2003; In Open Court at 1:20 p.m.:

2 (No morning session)

3 Defendant's Motion for Change of Venue:

4 THE COURT: We're ready to begin
5 with the first of these individual Voir Dire of
6 prospective jurors. Before we do that, I think we
7 should address the Defendant's motion for change of
8 venue. I think the request was made by the Defense
9 prior to actually starting the Jury selection. I
10 have no problem with allowing a closed hearing. I
11 think it would be appropriate. The thing that I
12 would point out, however, is that we have two
13 approaches to determining the answer to that
14 question. The first is the one set forth quite
15 nicely in Defendant's brief, wherein they have
16 methodically laid out the particulars of this case
17 with an overlay of other cases of similar
18 situations or what they allege to be similar
19 situations.

20 It appears to me that the Acid test is to
21 question the prospective jurors, and although that
22 I have to go on really is my personal experience in

1 other cases, which quite frankly is rather limited,
2 only had four or five of these. But in one of
3 them, particularly, and it started to raise its
4 head in the other and then it seemed to go away,
5 but by questioning these people individually, and
6 that is the whole purpose for it, you have an
7 opportunity to really delve into such areas. And I
8 find that most people are embarrassingly honest.
9 The fear is always that you are going to have
10 people that get up here and don't tell you exactly
11 what they think or what they remember or whatever,
12 and I don't think that the majority of people do
13 that. I think people take their Jury duty very
14 seriously and they honestly try to answer the
15 questions the way that they think.

16 Now by saying that, if you want a closed
17 hearing to present the one phase of your argument,
18 you are entitled to that, I'll not deny that. I'm
19 saying that I think it is more appropriate to go
20 through several of these people to find out whether
21 or not you have any chance of picking a fair Jury
22 here. I quite truthfully think that you do. And

1 let me state on the record my reasons for that.

2 Twenty years ago, any murder case in this
3 County would have had people you never see in the
4 Courthouse here watching it every day, like going
5 to the theater. Today you have very few people
6 that come in that aren't directly associated with
7 any murder case, even a capital case, we have a lot
8 of those, and people read about them any more in
9 the paper, not only in our County, but in the
10 adjoining County, which has a much higher murder
11 rate, Mahoning County, that the bloom is off the
12 flower. Everything runs together. If you talk to
13 people that have done this, they have a hard time
14 keeping track of which murder you are talking
15 about.

16 Now I think arguably in this particular
17 case, primarily based on the fact that we had a
18 prior codefendant that was tried, that case drew
19 its ordinary coverage. It may be because of that
20 fact alone that this is a different situation, but
21 I don't know how that is a provable situation
22 unless and until we engage in some conversation

1 with these folks to determine that. On the basis
2 of the brief that you put forth, I think that any
3 Judge sitting and reading this could go either way
4 on it. I could say, "Yes, there's been an undue
5 amount of publicity," or I could say, "No, I don't
6 think that is the case."

7 I think the real test comes from an
8 attempt to question some of these people, and I
9 think before we spend more than a couple of days,
10 you are going to find out very clearly whether this
11 is an unusual case that sticks in the mind of the
12 public. What I'm asking for are your thoughts on
13 the matter. Both sides.

14 MR. JUHASZ: Judge, it is obvious
15 that you have spent some time going over the motion
16 for change of venue, including Exhibits. I'm not
17 going to reiterate all of that. I am only going to
18 supplement to this extent and degree. And probably
19 some of my colleagues will chastise me for making
20 this argument, but it is essentially an argument
21 about Federalism. And Federalism these days is
22 like the weather, that people talk about it and

1 nobody does anything about it.

2 The reason I point that out is because I
3 quite agree with you that a Trial Judge in your
4 particular situation, can look at cases like
5 Shephard vs. Maxwell and Irvin vs. Dowd; and look
6 at the State Court cases that say, "Well, you
7 should try to pick a Jury before you go to the
8 inconvenience and expense of just automatically
9 changing a case to another County."

10 My only point that I would like to make
11 is that in this particular case, I think the number
12 of newspaper articles and as the Court pointed out
13 the fact that there was a prior trial, makes this a
14 case that there has been a saturating amount of
15 publicity. I think we noted some 67 articles and
16 attached as Exhibits. The Federalism point is that
17 Shephard against Maxwell is a 14th Amendment case,
18 States are of course under the 1983 decision in
19 Michigan against Long, the Supreme Court made it
20 quite clear when you construe your State
21 Constitution if you want to do them in a way that
22 varies with the Federal Constitution, that is all

1 right with the United States Supreme Court, as long
2 as you don't railroad the guarantees that are
3 provided in the Federal Constitution. For purposes
4 of this argument, it seems to me that the Supreme
5 Court's construction of the due process clause in
6 Shephard against Maxwell, which says that when
7 there's this kind of publicity, the due process
8 clause says don't even take a chance, be safe, and
9 simply transfer the case out of the community. And
10 so that is the only argument that I want to make.
11 Thank you.

12 THE COURT: Mr. Bailey?

13 MR. BAILEY: May it please the
14 Court, Counsel for the Defense, I think the best
15 path to follow would be to Voir Dire the jurors on
16 the issue of pre-trial publicity. We're doing it
17 individually. There would be an opportunity to see
18 exactly how much knowledge they have of the prior
19 case and about this case, in particular. And
20 whether they formed opinions. And the key test is
21 whether they are able to set aside their prior
22 knowledge and any opinions that they have formed,

1 and make a decision basically on a clean slate in
2 here.

3 Because as a practical matter, because we
4 live in modern times, people have access to the
5 Internet that they didn't have 20 years ago or back
6 in the fifties, when the Shephard case arose. I
7 remember delivering the Cleveland Press with the
8 headlines and the editorials blaring that there was
9 a killer on the street and how come he wasn't
10 arrested and in custody. It is a totally different
11 situation today. People, unless they are ostriches
12 with their heads buried in the sand, they look at
13 the Internet. They get local news and National
14 news. They get newspapers, T.V. and radio, too,
15 and they talk to other people in the community. So
16 it is pretty hard today to find people who really
17 have no knowledge whatsoever about a case,
18 especially a high publicity case.

19 And before we jump to the time and undue
20 expense of changing venue, I think that we should
21 at least take the opportunity here to see how these
22 people have been affected and whether they are able

1 to set aside anything that they have read, any
2 opinions that they may have formed, and be able to
3 determine this particular case fairly and
4 impartially, and I think we're going to find that
5 we probably will be able to impanel a Jury.

6 THE COURT: For the record, the
7 Court at this point in time is taking -- there's
8 been no one in the Courtroom, so we have in affect
9 had a closed hearing on the issue of venue. No one
10 other than the necessary parties. I am taking that
11 motion under advisement, and I'm going to request
12 that we go forward with some of the Voir Dire, and
13 I think that the responses that we get could work
14 both ways in my eventual decision on this, of
15 course. It is on that first layer, that is the
16 legal argument on the facts that already exist,
17 rather than just on what we're about to go through.
18 Does that make any sense?

19 MR. JUHASZ: Yes, Sir.

20 MR. INGRAM: This is on an entirely
21 different thing. I noticed when I walked out in
22 the hallway that there are three jurors sitting on

1 the bench right over here and I'm assuming that the
2 three individuals are Jurors Rowley, Gray and
3 Caraway. I would simply respectfully submit that
4 since Miss Rowley will be a while, that the other
5 two might be far more comfortable sitting in the
6 Jury room.

7 THE COURT: That is a good idea.
8 Any objection to that?

9 MR. BAILEY: No objection.

10 MR. JUHASZ: One more thing for the
11 record. We filed today and I delivered to the
12 Court and Mr. Bailey a Defendant's submission for
13 preliminary instruction except for a couple of
14 typo's, that is literally the same thing that the
15 parties have agreed to give the prospective jurors,
16 so I would like the record to reflect that although
17 it is captioned as the Defendant's submission for
18 purposes of the filings, it is in essence, the
19 joint agreement of the parties that that
20 preliminary instruction be something that each of
21 the jurors will read prior to coming in here for
22 individual Voir Dire. It being our hope that by

1 giving them sort of a primer on the death penalty,
2 that we can spend less time teaching them about the
3 death penalty and spending more time asking about
4 their attitude on it. I believe I have accurately
5 stated our agreement on how to handle that.

6 MR. BAILEY: Right. I made six
7 copies for the Jury Commissioner, because I
8 understand we're bringing in six at a time. We
9 could have one of those also marked as Court's
10 Exhibit for Appellate purposes.

11 THE COURT: There's a copy then on
12 file. I usually ask them if they have read it
13 before we start.

14 (Juror No. 4, W. Jean Rowley entered the Courtroom.)

15 THE COURT: Ma'am, you probably have
16 an idea by this time. You read that information
17 sheet that was given to you?

18 MS. ROWLEY: Yes.

19 THE COURT: You are called here as a
20 prospective juror, and the purpose of this inquiry
21 today is to find out your thoughts and feelings in
22 regard to sitting on such a Jury, and whether you

1 would be able to do what the law requires that each
2 of the jurors do.

3 As you know by now, this case will go
4 forward on trial as any ordinary trial, to
5 determine whether or not the Defendant is guilty or
6 not guilty of the charges that have been filed
7 against her. One of those is aggravated murder
8 with aggravating circumstances. And no one at this
9 point has any idea what the result of that will be.

10 If the Jury should return a verdict of
11 not guilty, then that is the end of the trial. If
12 the Jury should make the opposite finding, however,
13 then that same Jury will be brought back. That is
14 a very -- usually one day affair, but just as
15 important of course, and they are called upon then
16 to listen to the aggravating circumstances as put
17 forth by the Prosecution. And the Prosecution has
18 to prove beyond a reasonable doubt, which is the
19 standard that is used throughout this trial, that
20 those aggravating circumstances outweigh any
21 mitigating factors. The mitigating factors come in
22 through anything that the Defense would want to

1 present, and mitigating factors would be reasons
2 why the death penalty should not be imposed. And
3 the Jury is called upon to make that decision. Did
4 the Prosecution carry the burden of proof beyond a
5 reasonable doubt to outweigh any mitigating
6 factors?

7 Now, all of the folks you were in that
8 room with have their own idea about the law. And
9 most people carry some feelings about the question
10 of the death penalty. Probably some in that room
11 have never thought about it before. It would be
12 the first time they would actually be required to
13 think it through. Some of us could never, under
14 any circumstances, engage in any activity where we
15 had to make such a decision. Others of us feel
16 just as firmly in our hearts that if a person takes
17 another person's life, they should be put to death.

18 Well, neither person with those extreme
19 positions, if I can call them that, could very well
20 sit on a Jury of this type because each of the
21 jurors are going to have to follow the law and
22 those two positions I have stated is not the law.

1 But the law requires this two phase inquiry.

2 At the conclusion, if the Jury decides
3 that the Prosecution has proven that the
4 aggravating circumstances outweigh the mitigating
5 factors beyond a reasonable doubt, then that Jury
6 has to consider the possibility of imposing the
7 death penalty. They have other choices. But the
8 law says they have to consider and if appropriate
9 under the law, which you will be given at the
10 appropriate time to be able to make that decision
11 to impose the death penalty.

12 That is what these folks are primarily
13 going to make inquiry about. You should freely
14 state your opinion. This is the time to do it.
15 And anything that you state as your opinion, we'll
16 respect. You are entitled to your opinion on
17 everything. And being a school teacher, I imagine
18 you have an opinion on most things. The other
19 issue that they will inquire into is that of
20 whether or not this case could be fairly tried in
21 this County. Both sides have a right to have a
22 fair trial.

1 And particularly the Defendant. The
2 Defendant is here with the possibility that this
3 Jury could decide that she will forfeit her life.
4 The worst thing that could happen would be if, in
5 starting this trial, we have a Jury that is not
6 able to assure her and the State a fair trial.
7 This case has to be decided on the evidence given
8 to them in this Courtroom, and the Jury then has to
9 accept the law as given by the Court, even though
10 they may not agree with the law. They have to
11 accept it and to apply it.

12 This case has had some publicity. All
13 cases of this nature have publicity. It is a
14 question whether or not the publicity that has
15 occurred is such that it has tainted the Jury pool
16 to the point where they can not in good conscience
17 say, "I can be unbiased and unprejudiced and set
18 aside anything that I did hear about this." You
19 have the picture, right?

20 MS. ROWLEY: Yes.

21 THE COURT: Fair enough.

22 Mr. Bailey, you may inquire.

1 EXAMINATION BY MR. BAILEY OF MS. ROWLEY:

2 Q. Mrs. Rowley, good afternoon. My name is Ken
3 Bailey. You saw me in Court the other
4 day. This is Chris Becker. I told you
5 he would be here and he is. We're going
6 to ask you some questions about these
7 proceedings. First, you indicated on
8 your questionnaire that you had read
9 about this case, you gained some
10 information from the local paper, the
11 Tribune, is that right?

12 A. Yes.

13 Q. And I take it you read it fairly extensively
14 daily?

15 A. I always scan. I don't always read the
16 details.

17 Q. How close attention did you pay to this?

18 A. I know the general circumstances. I don't
19 think I know any details really.

20 Q. Now you understand, because we live in modern
21 times, folks are exposed to T.V. and
22 radio and the newspapers, the Internet,

1 talking to folks in the community,
2 talking to your husband or family
3 members, or other people regarding things
4 that you read in the paper. Since you
5 filled out the questionnaire, has
6 anything come to mind about whether you
7 had any discussions about this?

8 A. We had some discussion, my husband and I, but
9 not in our family and not in any detail,
10 other than to mention that we knew that
11 it had happened. That was about it.

12 Q. And because publicity is so persuasive these
13 days, the important thing isn't about
14 whether you read about the case or even
15 if you formed an opinion, the key thing
16 is, can you set aside what you have heard
17 before or any opinions that you might
18 have formed before, and try this case,
19 with a clean slate?

20 A. Since I have never done it, I don't know for
21 sure. I would hope that I could try to
22 do it.

1 Q. You are a retired teacher?

2 A. Yes.

3 Q. What did you teach?

4 A. Business education and I was a school
5 counselor for 12 years.

6 Q. And as a teacher, you would teach students,
7 they would come into your class, the
8 chalkboard, a clean slate, so to speak,
9 and they would come in without any
10 knowledge, where sometimes they had some
11 knowledge and you would correct what they
12 learned before. And I take it you are
13 aware that the newspaper always doesn't
14 get things right; is that right?

15 A. Yes.

16 Q. And there's a reason for that. As you look
17 around the Courtroom today, there's no
18 news media here. I'm sure maybe tonight
19 there will be some type of story in the
20 newspaper or on T.V., and it is going to
21 be based on a reporter coming in for
22 maybe two or three minutes, getting an

1 impression of what is happening at that
2 time and then doing some type of feature
3 on the trial. It is important that you
4 don't pay any more attention, that you
5 not read the papers or listen to the
6 T.V., if it comes on, regarding this
7 particular case while you are on this
8 particular Jury. You can do that?

9 A. Yes.

10 Q. When a reporter does a story based on what
11 happens in three minutes, you realize
12 that they miss everything that happened
13 before they came in here and everything
14 that happens after they leave here,
15 right?

16 A. Yes.

17 Q. So their impression could be totally different
18 from what actually occurs in the
19 Courtroom. You would agree with that?

20 A. Yes.

21 Q. And if you were to be picked and you served on
22 this Jury, and then let's say somebody

1 would save the newspapers for you and you
2 read them afterwards, you would look at
3 them after the trial was over and say, "I
4 sat in that trial and what is in this
5 paper, it is totally wrong." The
6 impression you get is it is totally
7 different. So, it is very important that
8 you make a decision based only on what
9 you hear here in the Courtroom, from the
10 witnesses, that may testify, and from the
11 instructions given to you by the Judge.
12 It is an intellectual exercise basically,
13 that we're asking you to do. Something
14 that you do in the classroom. You are
15 used to doing that?

16 A. Yes.

17 Q. It is not a strange experience that we're
18 asking you to come to grips with here.
19 You think you could do that?

20 A. Yes.

21 Q. And you think, can you be fair and impartial
22 to both sides in this case, give this

1 Defendant a fair trial?

2 A. I think so, since I have never done it, I
3 don't know for sure whether something
4 would influence me that I haven't even
5 thought about at this point.

6 Q. At this point, there's nothing that you are
7 aware of that would make you biased
8 against either side, right?

9 A. No.

10 Q. And you think you can give both sides a fair
11 shake in this trial?

12 A. I think so.

13 Q. Now, let's go to this issue of the death
14 penalty as a possible punishment. I take
15 it, looking at your questionnaire, that
16 you are in favor of the death penalty for
17 certain types of cases, in cases of
18 homicide?

19 A. I think I am, yes.

20 Q. And you have held this view for awhile?

21 A. Yes.

22 Q. Has it become stronger over the years?

1 A. No.

2 Q. Or weaker or stayed about the same?

3 A. About the same.

4 Q. And you believe in the death penalty being
5 appropriate for some crimes, is that
6 based upon a personal, religious, moral
7 or ethical belief or some combination
8 thereof?

9 A. Probably a combination.

10 Q. And you understand that this case could be
11 tried in two different phases. It is
12 like two separate trials. The first part
13 deals with the issue of guilt or
14 non-guilt. And if the State convinces
15 you in the first phase that the Defendant
16 is guilty of a crime called aggravated
17 murder and one or more specifications of
18 aggravating circumstances, then we would
19 then move onto a second phase that would
20 deal with the issue of punishment. And
21 in a second phase or second trial, the
22 issue there would be what is the

1 appropriate punishment for this
2 Defendant, for this crime. You
3 understand the death penalty is not an
4 automatic punishment?

5 A. Yes.

6 Q. Because in the first phase, the issue of
7 punishment would never come up, right,
8 and because it is not appropriate in the
9 first phase, you wouldn't hear any
10 testimony or evidence dealing with this
11 issue of punishment. The only question
12 in the first phase deals with guilt or
13 non-guilt. You agree with that?

14 A. Yes.

15 Q. Now, let's say we get to a second phase. The
16 State has the burden of proof in both
17 phases, and let's say we convince you
18 beyond a reasonable doubt that there are
19 aggravating circumstances, and that the
20 aggravating circumstances beyond a
21 reasonable doubt, outweigh any mitigating
22 factors presented. We don't know what

1 these mitigating factors are at this
2 point, because it is not pertinent at
3 this point, but mitigating factors are
4 things that would work to a Defendant's
5 benefit, and work against returning a
6 death penalty verdict.

7 A. Okay.

8 Q. If the State convinces you beyond a reasonable
9 doubt, so that you are convinced to a
10 moral certainty that the aggravating
11 circumstances that the State presents,
12 would outweigh these mitigating factors
13 beyond a reasonable doubt, would you be
14 able to return the death penalty verdict
15 in that case?

16 A. I don't know. It would be very difficult.

17 Q. If the Judge gives you instructions of law,
18 would you be able to follow those
19 instructions of law?

20 A. I think I could.

21 Q. That is all we can ask people to do. You say
22 it would be very difficult, and we would

1 expect nothing less, that it would be a
2 difficult decision because the death
3 penalty is not applied in every case, it
4 is not applied lightly. Under our system
5 of justice, all we can ask is that people
6 who come in to serve as jurors, pay close
7 attention and render a decision based on
8 the facts that are presented, the
9 evidence that is presented, and to follow
10 the law given to you by the Court. And
11 it is a new experience for you. It is
12 not an easy experience, but you
13 understand that to make our system work,
14 we have certain obligations of
15 citizenship. You agree with that?

16 A. Right.

17 Q. As citizens, one of our obligations is to go
18 out and vote when the time comes?

19 A. Yes.

20 Q. Another obligation may be to serve in the
21 military. We have young men and women
22 now, who are overseas fulfilling their

1 obligations. And another obligation as
2 citizens is to serve as jurors when we're
3 summoned in, if we're able to.

4 A. Yes.

5 Q. And I take it, you would be able to do that?

6 A. Yes, that's the only reason I'm here is
7 because I think it is something that has
8 to be done. It is not something I want
9 to do.

10 Q. It should be a very interesting experience,
11 and you have served your community as a
12 teacher before. This is another
13 opportunity to serve your community to
14 make sure the system works. That is what
15 our system is about, people taking part
16 in our system of Government. There's one
17 other thing that I want to get into. You
18 understand that the Defendant here is not
19 charged as the triggerman, as the
20 principal offender, but rather is what we
21 call an accomplice, somebody who
22 purposely solicits or procures another

1 person or aids and abets another person,
2 helps another person. The Judge will
3 instruct you as to the meaning of those
4 terms at a later time, but she's charged
5 with helping another person plan this
6 particular killing, and doing it with
7 prior calculation and design, and it was
8 done on purpose. Let me ask you. At
9 this point, this is the only chance we
10 get to talk together until this case is
11 all over. If there are two phases, we
12 can't talk to you in between. If you
13 have questions, you have to address it to
14 the bailiff, or to the Court, and we're
15 not being anti-social or anything, it is
16 just by our rules of conduct. We're not
17 allowed to have any communication with
18 you outside of the Courtroom here. Do
19 you have any questions that you think
20 that you would like to ask that you think
21 we could answer at this point that
22 pertain to what we're doing here?

1 A. Not that I can think of.

2 MR. BAILEY: Thank you very much for
3 your candid answer. Defense counsel will now get
4 an opportunity to ask you some questions.

5 EXAMINATION BY MR. INGRAM OF MS. ROWLEY:

6 Q. Good morning, Ma'am. How are you finding your
7 Jury experience thus far?

8 A. I don't really know how to answer. I had no
9 expectations one way or the other,
10 because I have never done it before. I
11 had done it like a County Court thing one
12 time, and as I indicated, it was settled
13 out of Court, so we didn't go through all
14 of this information that you have
15 provided for this trial.

16 Q. My name is Jerry Ingram. John Juhasz and I
17 share the responsibility of representing
18 Donna Roberts, who is on trial for her
19 life, and obviously, we take our
20 responsibilities seriously. We think we
21 should take reasonable precaution in
22 selecting a fair minded Jury, the same

1 type of Jury that you or I would want if
2 we were on trial. Does that sound fair
3 enough to you?

4 A. Yes.

5 Q. This is the only opportunity we'll have to get
6 to know you to determine whether you are
7 comfortable sitting on this panel. And
8 this the only opportunity that you will
9 have to talk directly to the lawyers.
10 So, if during my conversation with you,
11 there's anything that pops into your mind
12 that you would like to discuss with me,
13 that you would like to ask me, that you
14 would like to volunteer, please feel free
15 to do so.

16 A. Okay.

17 Q. This is alot like a job interview, except when
18 you go to a job interview, you select the
19 job you get to be interviewed for. Here
20 we selected you and we're interviewing
21 you today for the most serious job there
22 is, the job of finding the truth and

1 determining the fate of another person.
2 Not everyone is going to be up to that
3 responsibility. And some people have
4 already told us, for one reason or
5 another, that they would prefer not to
6 assume that responsibility. How do you
7 feel about being asked to assume this
8 responsibility?

9 A. As I indicated on the questionnaire, if I had
10 a choice, I would choose not to do it,
11 but if it is a responsibility that has to
12 be done, I would try to do it.

13 Q. Donna Roberts and Robert Fingerhut were
14 divorced, but continued working together
15 at the Greyhound bus station in
16 Youngstown and Warren and living together
17 in Howland Township. In a nutshell, this
18 case boils down to the Government's
19 allegation that Donna Roberts plotted or
20 conspired with a male companion, Nate
21 Jackson, to cause the death of Robert
22 Fingerhut. You understand that this

1 trial is only about one person and one
2 person only, and that is Donna Roberts?

3 A. Yes.

4 Q. Now throughout the course of these proceedings
5 you will hear the name, Nate Jackson, and
6 it won't take long for you to conclude
7 that Nate Jackson did what the State says
8 he did. But that is not the question you
9 are here to resolve. The question you
10 are here to resolve is, did Donna Roberts
11 help him do it. Can you keep this case
12 separate from any other, anything that
13 you may have read, seen or heard, about
14 Mr. Jackson?

15 A. I think so. I didn't really pay that much
16 attention. I knew the circumstances, but
17 did not know details, didn't really want
18 to know details.

19 Q. We'll get back to that in a minute, if that is
20 okay with you. In support of the
21 allegations that Donna aided or
22 participated in the death of Robert

1 Fingerhut, the State will present various
2 letters and recorded conversations
3 between Donna and Nate. Some of these
4 letters and conversations are sexually
5 explicit. And to be downright candid
6 with you, they might be rather offensive.
7 But you understand that the allegation
8 here is murder, not loose morality. You
9 understand that?

10 A. Yes.

11 Q. And no matter how shocked or offended you may
12 be by the sexual nature of some of the
13 State's evidence, your job responsibility
14 as a trial juror will be to test that
15 evidence, to see if it ties Donna to this
16 alleged crime. You think you are up to
17 that?

18 A. I think so.

19 Q. I want you to search your own mind for a
20 minute, and do you think that sexually
21 explicit evidence will cause you an undue
22 problem during the course of this trial?

1 A. That is what I understood from the paper.

2 Q. Can you recall with any more detail what you
3 may have read or heard about these
4 letters?

5 A. No. As I said, I don't pay attention to a lot
6 of those details because they are
7 offensive to me. I skip over them.

8 Q. Your daughter Susan is a lawyer?

9 A. Yes.

10 Q. By the way, you are to be complemented on the
11 job you did with raising your children.
12 You obviously were great parents. All
13 four of them have done very well.

14 A. Thank you.

15 Q. Since you got your summons to appear for Jury
16 duty in this case, did you talk to your
17 daughter about the case at all?

18 A. I said that I was called for Jury duty. That
19 is all.

20 Q. Is she a local lawyer?

21 A. She's in Wilmington Delaware and at this time,
22 she's not practicing.

1 Q. How about your granddaughter, she's a second
2 year law student?

3 A. At Case Western Reserve.

4 Q. Have you discussed your Jury summons with her
5 at all?

6 A. No.

7 Q. How does she like Case?

8 A. She loves it.

9 Q. In the conversations that you had with your
10 husband about this case, did you express
11 any kind of an opinion about whether
12 Donna was likely involved or not?

13 A. Not really. We discussed in general terms
14 that we read it and saw it and wondered
15 what was going on, but really didn't
16 pursue it, because it didn't really
17 affect us in any way.

18 Q. You did read in the newspaper that Nate
19 Jackson was tried and convicted?

20 A. Yes.

21 Q. Does that fact make you believe anything about
22 Donna's involvement?

1 A. Not necessarily, not unless I think I would
2 have to know more about the
3 circumstances.

4 Q. You and I talked a moment ago about this isn't
5 Nate's trial?

6 A. Right.

7 Q. And the issue here is not whether he did
8 anything, we know he did something. The
9 issue here is whether Donna helped him or
10 not.

11 A. Yes.

12 Q. And you will hold the State of Ohio to its
13 burden of proving that beyond a
14 reasonable doubt, if they can?

15 A. Yes.

16 Q. Mr. Bailey gave you a bunch of reasons why you
17 are told not to listen to the news or
18 read the newspaper about the case. Did
19 you see during the O.J. Simpson trial and
20 I hate to go there, but every night there
21 would be a bunch of hot shot lawyers on
22 the T.V. station, and some would be

1 Prosecutors and some would be Defense
2 Attorneys, and they would be putting a
3 different spin or perspective on the
4 evidence that had been elicited in Court
5 that day.

6 A. Yes.

7 Q. Did you see how that could affect a juror
8 being exposed?

9 A. Certainly.

10 Q. To those things?

11 A. Certainly.

12 Q. It is the same in this case and that is why we
13 ask you to avoid news media coverage.
14 Will you do your best to do that?

15 A. Yes.

16 Q. And you do understand the news coverage is
17 brief, designed to sell and sometimes
18 inaccurate?

19 A. Yes.

20 Q. You yourself, you have noticed discrepancies
21 in the newspaper, haven't you?

22 A. Yes.

1 Q. If you are selected as a trial juror, you will
2 be told to keep an open mind, that is,
3 not form any impression about the
4 evidence in this case, until the case is
5 over. Because if you form an early
6 impression, that impression might prevent
7 you from objective listening to the rest
8 of the evidence. Do you understand what
9 I am getting at there?

10 A. Yes.

11 Q. So you really have to do your best to keep an
12 open mind until the case is all the way
13 over with. Will you do your best to do
14 that?

15 A. Yes. I think at times that could be very
16 difficult, too, because I think you don't
17 know for sure how something that is
18 presented is going to relate back to
19 something that you already experienced or
20 read.

21 Q. That is right.

22 A. That is tough.

1 Q. But that is exactly why we ask you to keep an
2 open mind because you can't know how
3 everything fits together until you have
4 it all and you won't have it all until
5 the end of the case. Let me put it like
6 this. The State goes first, because they
7 have the burden of proof. If you were to
8 decide this case, just after you heard
9 what they had to say, it might prevent
10 you from listening to what you would hear
11 from the Defendant's perspective, if the
12 Defense elected to present evidence. Do
13 you understand?

14 A. Yes.

15 Q. And your family and friends are going to know
16 you are sitting on this Jury. They are
17 going to know you are here for awhile.
18 And because of your involvement, they are
19 going to follow these proceedings closer
20 than they ordinarily would. And not that
21 they intended to cause a problem, but
22 naturally, they are going to want to talk

1 with you about your experience.

2 A. Probably. I only have two children around to
3 discuss it. They are pretty busy and we
4 don't discuss a lot of things outside of
5 our family.

6 Q. Well, the Judge is going to tell you that you
7 are not allowed to talk about this case
8 with anyone, even your own jurors, until
9 it is over. You think you could do that?

10 A. Yes.

11 Q. We have to talk about penalties. And that is
12 something that troubles me a little bit.
13 Because I'm standing up here talking to
14 you about penalties, and we don't even
15 know if Donna did anything wrong or not.
16 Seems to me, a whole heck of a lot like
17 putting the cart before the horse. Does
18 that old adage make sense to you in this
19 perspective?

20 A. Yes.

21 Q. You understand that this is potentially and
22 only potentially a two phase process?

1 A. Yes.

2 Q. Like if Donna is found not guilty what would
3 happen here. We would all pack up our
4 bags and go home, wouldn't we?

5 A. Yes.

6 Q. You understand that you may never have to
7 consider the issue of punishment. So
8 basically, what we're doing and only
9 lawyers can do this, we're standing up
10 here asking you some hard questions about
11 difficult issues that you may never even
12 have to address?

13 A. Yes.

14 Q. A capital trial, not necessarily this one, any
15 one, never gets to a second phase unless
16 the State proves beyond the existence of
17 a reasonable doubt the Defendant's guilt
18 on an aggravated murder charge, and
19 additionally, proves beyond a reasonable
20 doubt the Defendant's guilt on a death
21 specification. You think you understand
22 that?

1 A. I think I do.

2 Q. And it is hard. I bet you 20, 30 percent of
3 the lawyers don't understand this. Maybe
4 more. It is a difficult process. It
5 certainly is something that you don't
6 think about in your daily lives, nor do
7 you study. If you go into a second
8 phase, the issue with that second phase
9 is the appropriate penalty. And the
10 State is interested in knowing if you
11 could fairly consider the death penalty
12 as a sentencing option, if you had to
13 decide on a sentence. The flip side of
14 that is could you consider one of the
15 life imprisonment penalties as a
16 sentencing option if you ever had to
17 consider penalty?

18 A. That would probably be an easier decision.

19 Q. There are three life options. One is life
20 imprisonment without parole. And that is
21 permanent. You do not get out. You
22 understand that?

1 A. Yes.

2 Q. And the others are life imprisonment with
3 parole eligibility after serving 30 full
4 years or 25 full years. And that is day
5 for day, 30 years; day for day 25 years.
6 You got that?

7 A. Yes.

8 Q. If you are called upon to decide a sentence,
9 the Jury's decision is not made in a
10 vacuum. Judge will give you guidelines,
11 and the law allows the Jury to vote for a
12 life sentence if the Jury believes a life
13 sentence is appropriate; and conversely,
14 the law permits the Jury to vote for
15 death if the Jury believes that the death
16 penalty is appropriate. The most
17 important point for you as a juror to
18 remember is that the law will never
19 require you to vote for a sentence you do
20 not feel is warranted by the evidence.
21 And the Judge will tell you, you have to
22 balance and you read the preliminary

1 instructions, and Mr. Bailey talked to
2 you about aggravating circumstances, bad
3 things against mitigating circumstances,
4 positive things that can be said about
5 Donna Roberts. You are as a juror, you
6 are the sole judge of the weight of the
7 evidence. So, in weighing that evidence,
8 the buck stops with you. And it is up to
9 you to determine appropriateness. Do you
10 understand that?

11 A. Yes.

12 Q. Have you ever donated time, money, or services
13 to a political campaign or issue?

14 A. No.

15 Q. Do you belong to any group or organization
16 which is active in any political matter?

17 A. No.

18 Q. You are the secretary for the retired
19 teachers?

20 A. I was. I'm not right at the present time.

21 Q. In the last five years or so, have you signed
22 a petition on any public issue?

1 A. No.

2 Q. Do you belong to or associate with any group
3 which has crime prevention or law
4 enforcement as a goal, like MADD, SADD,
5 Neighborhood Crime Watch?

6 A. No.

7 Q. What do you think that we, and by we, I mean
8 society as a whole, can do to reduce the
9 crime problem we're having in this
10 country?

11 A. I do not know. I have thought about it. I
12 don't know.

13 Q. When you have thought about it, have you come
14 up with any ideas at all?

15 A. Other than family.

16 Q. Stronger families?

17 A. It is about the only solution I can see, and I
18 don't know how you do that, because you
19 surely can't legislate morality or
20 decency or common sense, I guess.

21 Q. You understand that sympathy has no place in
22 the Courtroom. The Court will tell you

1 the feelings of sympathy should not
2 affect your judgment. This is a Court of
3 law, not a Court of sympathy. We ask
4 jurors to do really hard things in this
5 country. We ask you to set aside a lot
6 of your beliefs and follow the law. And
7 we ask you to do things that are simply
8 difficult for all of us to do. And in
9 this case, if you are a juror, some of
10 the testimony and evidence will arouse
11 naturally, the feelings of sympathy. You
12 may hear testimony that at the time
13 Robert Fingerhut was shot and killed that
14 he was fighting for his life. I do know
15 that you will see photographs. Robert
16 was shot in the back of the head at point
17 blank range. You may see Coroner's
18 photographs; some of those might be
19 enlarged. What I wanted you to
20 understand about this evidence, is that
21 even though it evokes an emotional
22 response from you, say sympathy or anger,

1 you are still going to have to evaluate
2 or test that evidence to determine
3 whether it ties Donna to this offense.
4 Do you understand that?

5 A. Yes.

6 Q. And will you do your best to do that?

7 A. Yes.

8 Q. You have heard the Judge talk about, and I
9 think in the preliminary instructions he
10 wrote, he wrote about the presumption of
11 innocence. How do you personally feel
12 about this rule of law which requires
13 that jurors presume the Defendant
14 innocent?

15 A. I think that is pretty basic to our whole
16 Judicial system, our whole way of life.

17 Q. That is what makes this country what it is?

18 A. Yes.

19 Q. Do you understand that the presumption of
20 innocence remains with Donna until it is
21 removed, if ever, by proof beyond a
22 reasonable doubt?

1 A. Yes.

2 Q. It is like a cloak, and that cloak stays with
3 her until it is taken away from her, if
4 ever, by proof beyond the existence of a
5 reasonable doubt. And I would like to
6 try and spend a few moments talking to
7 you about the presumption of innocence,
8 and what I perceive to be some more human
9 terms. Presumption of innocence, that's
10 sort of like legalese. If one of your
11 four children were accused of some kind
12 of wrongdoing, and you honestly in your
13 heart felt that whichever child it was,
14 did not do it, you would require evidence
15 that the kid did it, before you would be
16 willing to change your mind, wouldn't
17 you?

18 A. Yes.

19 Q. Does that sound like the presumption of
20 innocence to you?

21 A. Yes.

22 Q. And you understand that that presumption is

1 basically the same as an honest belief in
2 the innocence of another?

3 A. Yes.

4 Q. And if your friend or loved one or one of your
5 children were accused of wrongdoing and
6 evidence was presented to you, you just
7 wouldn't accept it willy nilly, would
8 you?

9 A. No.

10 Q. You might look at it with a critical eye, to
11 see if it amounts to what it is supposed
12 to amount to and will you do that in this
13 case?

14 A. Yes.

15 Q. Because of the presumption of innocence, the
16 State has the burden of proof. And as
17 the Judge is going to tell you, the State
18 has the burden of proving each and every
19 essential element of the offenses charged
20 beyond a reasonable doubt. Essential
21 elements are like necessary ingredients.
22 At the end of the case the Judge is going

1 to give the Jury all of the essential
2 elements, the necessary ingredients, and
3 the State of Ohio has to prove each and
4 every one of those essential elements by
5 proof beyond a reasonable doubt or they
6 have not met their burden of proof. Does
7 that sound right to you?

8 A. Yes.

9 Q. It is not two out of three, it is not three
10 out of five. They have to prove each and
11 every essential element. Donna doesn't
12 have to prove anything. The State has
13 levied these accusations and now the
14 State must prove what it alleges.
15 Basically it is time to put up or shut
16 up. You do understand that Donna is on
17 trial for murder and not for being a
18 woman of loose moral character?

19 A. Yes.

20 Q. And while the State may prove that Donna is a
21 loose woman, the State's burden in this
22 case is to prove that Donna intentionally

1 participated in the death of Robert
2 Fingerhut. Do you understand that?

3 A. Yes.

4 Q. Will you hold the State to that burden?

5 A. Yes.

6 Q. There are two aggravated murder counts. The
7 first count is purposely with prior
8 calculation and design; that is advance
9 planning. That's the old premeditation
10 we used to talk about -- causing the
11 death of Robert Fingerhut. The Judge
12 will give you definitions of all of those
13 things. But the State has to prove all
14 of those.

15 And there's a second aggravated
16 murder count which is felony murder,
17 which is purposely causing the death of
18 another while committing aggravated
19 burglary or aggravated robbery. And
20 again, the Judge will define those for
21 you, but the State has to prove each and
22 every one of those. And each of those

1 has, each of the aggravated murder counts
2 has a death or two death specifications
3 attached that the aggravated murder was
4 committed during an aggravated robbery or
5 aggravated burglary. That is sort of
6 hard to understand. You think you have a
7 grip on it?

8 A. Yes, I think so.

9 Q. Now, purpose is an essential element of both
10 of these aggravated murder charges. And
11 as the Judge will tell you, purpose is
12 the same as intent. A person acts
13 purposely if it is his or her specific
14 intent to cause a specific result. That
15 is simple enough, isn't it? Would you
16 agree that the facts and circumstances
17 surrounding an act can shed light on the
18 actor's intent?

19 A. I would think so.

20 Q. For instance, if you leave a paper trail as
21 opposed to covering your tracks, it is
22 less likely your objective is unlawful?

1 A. Yes.

2 Q. Or if you openly meet in the light of day as
3 opposed to a secret rendezvous under
4 cover of darkness, it is less likely the
5 objective of the meeting is lawful.

6 Count three is aggravated burglary.
7 And aggravated burglary is trespass by
8 stealth, force or deception. Either
9 snuck in or forced your way in, in an
10 occupied structure, when Robert Fingerhut
11 was present, with purpose to commit any
12 criminal offense. So there's four here.
13 And trespass the Judge will define that
14 for you, is to enter or remain on the
15 land or premises of another. That makes
16 sense, doesn't it?

17 A. Yes.

18 Q. The trespass is an essential element of
19 aggravated burglary. Will you hold the
20 State to its burden of proving trespass
21 by proof beyond the existence of a
22 reasonable doubt?

1 A. Yes.

2 Q. And aggravated burglary is the offense alleged
3 in the first death specification to the
4 two aggravated murder counts. Remember
5 the two aggravated murder counts had
6 death specifications that the aggravated
7 murders were caused during an aggravated
8 burglary and aggravated robbery. So
9 aggravated burglary is the first death
10 specification. Then the last count of
11 the indictment is aggravated robbery,
12 that in committing, attempting to commit
13 or fleeing after committing a theft
14 offense, the perpetrator of that offense,
15 that the person who was committing the
16 offense, had a deadly weapon on his
17 person. Does that make sense to you,
18 too?

19 A. Yes.

20 Q. And a theft offense is necessarily one that
21 involves the taking or an attempt to take
22 the property of another. That is what a

1 theft is about. Will you hold the State
2 of Ohio to its burden of proving that
3 there was an intended theft offense by
4 proof beyond a reasonable doubt?

5 A. Yes.

6 Q. And there are some firearm specifications, the
7 Judge will talk to you about that.

8 Now because the burden of proof is
9 on the State, Donna doesn't have to
10 present evidence. She doesn't have to
11 testify. And you already knew that,
12 didn't you?

13 A. Yes.

14 Q. If she doesn't testify, the Judge will tell
15 you, you can't hold it against her. Do
16 you understand that?

17 A. Yes.

18 Q. Can you answer, because it makes the Court
19 Reporter's job a little more difficult,
20 if she has to try to indicate on the
21 record that you are nodding yes, instead
22 of answering yes.

1 A. I'm sorry.

2 Q. That is okay. But in every day life, whenever
3 you are called upon to resolve a dispute,
4 what is the first thing we say to
5 ourselves, are I want to hear both sides
6 of the story?

7 A. Yes.

8 Q. Well, I know that most jurors would actually
9 like to hear what the Defendant has to
10 say. And that makes sense to all of us,
11 doesn't it?

12 A. Yes.

13 Q. Well, sometimes your oath as a juror requires
14 that you do your best to put aside that
15 natural inclination to want to hear both
16 sides. And if your oath requires you to
17 do that in this case, will you do your
18 best to do that?

19 A. Yes, I think that will be tough.

20 Q. Why don't you talk to me about that for a
21 moment? Why would it be tough. I think
22 I know.

1 A. Because you have those thoughts in your mind
2 of how you think something ought to be,
3 and if it is not that way, I think it is
4 hard to accept.

5 Q. Let me see if I understand that correctly and
6 do not let me put words in your mouth.
7 I'm sure you won't. Do not let me put
8 words in your mouth. If I start doing
9 that, stop me, and tell me that I'm
10 wrong. If things don't work out as you
11 expect, then there's questions in your
12 mind -- am I paraphrasing what you just
13 told me?

14 A. yes.

15 Q. If you expect Donna to testify and she doesn't
16 testify, that will raise questions in
17 your mind?

18 A. Right.

19 Q. In this country, in any criminal proceeding,
20 the Defendant does not have to testify.
21 That is a Constitutional protection
22 designed for all of us, not just for

1 Donna Roberts, and not just for someone
2 in this Courtroom. So, if you are called
3 upon as a -- if you are called upon to be
4 a juror in a criminal case, I guess you
5 can't expect that the Defendant will
6 testify. So if that expectation goes
7 unfulfilled, if she elects not to
8 testify, and I'm not saying that will
9 happen -- if she elects not to testify,
10 how will that make you feel?

11 A. Probably not as comfortable as if she did
12 testify. There's a whole lot of
13 information and circumstances that I
14 don't know anything about right now. I
15 can't answer specifically, I don't think
16 for certainty.

17 Q. Mr. Juhasz here uses an example that I'm not
18 very good at. The burden of proof is on
19 the State of Ohio, right?

20 A. Yes.

21 Q. To prove Donna Roberts' guilt by proof beyond
22 a reasonable doubt?

1 A. Yes.

2 Q. And you see this pitcher of water. Let's say
3 that this is proof beyond a reasonable
4 doubt and somewhere there's a line that
5 says proof beyond a reasonable doubt, and
6 that is for each individual juror to draw
7 that line, or he or she. Are you with
8 me?

9 A. Yes.

10 Q. It is the State's responsibility to fill that
11 pitcher up above the line.

12 A. Okay.

13 Q. The fact that a Defendant elects not to
14 testify adds nothing to the container.
15 Am I making any sense?

16 A. I see what you are getting at. I think it
17 makes it a little more difficult, but
18 again I assume that the rest of the
19 information and circumstances will
20 clarify that or help.

21 Q. So I guess all I can do is ask you, if Donna
22 elects not to testify, will you do your

1 best to follow the instruction of the
2 Court in that regard?

3 A. Of course.

4 Q. Since lawyers speak out of both sides of their
5 mouth all the time. If she does testify,
6 she's a witness just like any other
7 witness, do you understand that?

8 A. Yes.

9 Q. And you would judge her testimony by the same
10 rules and standards that you apply to
11 other witnesses?

12 A. Yes.

13 Q. You have heard the word indictment. Judge
14 told you about an indictment yesterday.
15 You understand an indictment is a piece
16 of paperwork?

17 A. Yes.

18 Q. It informs the Defendant of the nature of the
19 allegations leveled by the State. It is
20 not evidence and no matter how many times
21 it is read to you or referred to
22 throughout the course of these

1 proceedings, it is not magically
2 transformed into evidence. You
3 understand that? Grand Jury proceedings
4 were secret. Did you know that?

5 A. No, I did not.

6 Q. Donna didn't know if this case went to the
7 Grand Jury. Mr. Juhasz and I didn't
8 know. None of us were there. Did you
9 know that?

10 A. No.

11 Q. The Grand Jury only heard from one side, and
12 only determined that Donna should stand
13 trial. You are here as a trial juror.
14 Your role is different. You don't
15 determine whether someone gets to stand
16 trial. You determine whether someone is
17 innocent or guilty.

18 A. Right.

19 Q. And here Donna will have an opportunity to
20 test the evidence presented, because the
21 evidence before the Grand Jury was not
22 tested by her lawyers or by her. You

1 understand that?

2 A. Yes.

3 Q. A big part of your job responsibility is to
4 determine the credibility of the
5 witnesses. The Judge will tell you that
6 as a juror, you are sole judge of the
7 facts, the credibility of the witnesses,
8 and the weight of the evidence. He's
9 going to tell you you can believe all of
10 what a witness says, part of what a
11 witness says, none of what a witness
12 says. You have to determine who is
13 telling the truth, and who is not. That
14 is that job responsibility we started
15 talking about. Do you recall that?

16 A. Yes.

17 Q. And you think you are up to that
18 responsibility?

19 A. I think so.

20 Q. He's going to give you a whole list of
21 factors, manner of testifying, whether
22 there's a tell-tale sign or

1 reasonableness of testimony. Say
2 somebody testifies and it just doesn't
3 make sense to you, well, that is
4 something you would want to keep in mind,
5 isn't it?

6 A. I would think so.

7 Q. And in your daily life, you are frequently
8 called upon to determine whether someone
9 is telling you the truth or not, whether
10 it was one of your kids when they were
11 young, whether it is the dry cleaning
12 guy, whether it is the co-worker; and
13 over the course of our lives, we develop
14 a sixth sense for that, intuitive sense,
15 to help us determine whether someone is
16 telling the truth or not. Does that
17 sound familiar to you?

18 A. Yes.

19 Q. And the Judge is going to tell you that you
20 should take those tests of truthfulness
21 which you apply in your daily life, and
22 bring them into this Courtroom and apply

1 them to the testimony of each and every
2 person that testifies. Will you do that?

3 A. Yes.

4 Q. Now you have heard a lot about proof beyond a
5 reasonable doubt. Reasonable doubt is
6 doubt based on reason and common sense.
7 And the Judge will tell you that proof
8 beyond a reasonable doubt requires that
9 you be firmly convinced of the
10 allegations, and is proof of such
11 character that an ordinary person would
12 be willing to rely and act upon it in the
13 most important of his or her own affairs.
14 You have made important decisions in your
15 life, haven't you?

16 A. I think so.

17 Q. And before you make those decisions -- well,
18 sure you did. You decided to get
19 married, you decided to buy a house. You
20 decided to have four kids. You decided
21 to pay for college. Before you make an
22 important decision, don't you look at the

1 positives and the negatives?

2 A. Yes.

3 Q. And you keep the positives over on one side in
4 your mind or maybe even on a sheet of
5 paper and you keep the negatives over
6 here?

7 A. Yes.

8 Q. And after you get the list done, you sort of
9 focus on the negatives, because if you
10 can remove those negatives, the decision
11 is easy, isn't it?

12 A. Yes.

13 Q. So let's say it is a decision to buy the
14 house. And on your negative list, you
15 have the house might have termites.
16 Well, you would call in an exterminator
17 and have them check out the house, and he
18 tells you there's no termites, so you
19 scratch that off. Doesn't have enough
20 bathrooms. You call in a plumber who
21 says he can easily put another one in for
22 you. You scratch that off. But maybe it

1 is the interest rate. The interest rate
2 is troubling you and no matter how hard
3 you think about it, how hard you
4 investigate the interest rate, you still
5 have this reasonable doubt in your mind
6 that it is going to go down and you could
7 save money. As long as there's one
8 negative that is reasonable, you couldn't
9 say beyond a reasonable doubt that that
10 decision was the right thing for you, do
11 you understand that?

12 A. Yes.

13 Q. And do you understand that it is the same in
14 this case, if after evaluating and
15 weighing the evidence, you have one
16 reasonable doubt, you must return a
17 verdict of not guilty?

18 A. Yes.

19 Q. And you have heard the phrase circumstantial
20 evidence. Haven't you?

21 A. Yes.

22 Q. It is proof of one thing by direct evidence,

1 which somebody saw or heard or felt.

2 From what you can infer something else?

3 A. Yes.

4 Q. So in other words, in any case involving
5 circumstantial evidence, you are asked to
6 make like a leap in logic, aren't you?

7 A. Yes.

8 Q. And if you are going to make a leap in logic,
9 you certainly wanted to make sure that
10 that leap is reasonable, don't you?

11 A. Yes.

12 Q. And if you are asked to make inferences in
13 this case, will you test those inferences
14 to make sure they are reasonable?

15 A. Yes.

16 Q. And you remember talking to me about the
17 presumption of innocence and how that
18 might be the same as a belief in the
19 innocence of one of your kids, if he were
20 accused of wrongdoing?

21 A. Yes.

22 Q. Well, if one of your kids were accused of

1 wrongdoing and you were given
2 circumstantial evidence and told that it
3 led to an inference that indicated your
4 child had done the wrongdoing, you think
5 you might look for other reasonable
6 inferences that didn't lead to
7 wrongdoing?

8 A. I'm sure I would.

9 Q. Will you do that here?

10 A. Yes.

11 Q. And in order to properly test circumstantial
12 evidence, because it is like a chain,
13 isn't it, it would only be as strong as
14 its weakest link.

15 A. Yes.

16 Q. Will you look for weak links?

17 A. Yes.

18 MR. INGRAM: I thank you for your
19 time and attention. You have a pleasant afternoon.

20 THE COURT: Challenge for cause.

21 MR. BAILEY: Pass for cause.

22 MR. INGRAM: Pass for cause.

1 THE COURT: Ma'am, you will be in
2 the pool of jurors from which this Jury will be
3 selected. I don't know if I told you, but we'll go
4 through the prospective jurors until we get 34
5 people that have gone through this process that are
6 acceptable to both sides, and from that, the 12
7 will be chosen, plus four alternates. You should
8 call that number. Thank you very much.

9 (Juror No. 4 excused from the Courtroom)

10 (Juror No. 8, Tilghman Gray, entered the Courtroom.)

11 THE COURT: You read that paper that
12 was given to you, that you were asked to read?

13 MR. GRAY: Yes.

14 THE COURT: Have you ever had an
15 occasion to sit on a Jury before?

16 MRS. GRAY: No.

17 THE COURT: You know from what I
18 said the other day and from what you have read what
19 this case is about. The purpose of this afternoon
20 is to allow both sides an opportunity to ask you
21 various questions, and primarily that is to
22 determine whether you feel comfortable with sitting

1 on such a case, and whether or not there's
2 something that would make either side reluctant to
3 have you sit on the case. This trial at the first
4 phase, and it may be the only phase, will go
5 forward as any trial, and the Jury will be called
6 upon to determine whether or not the indictment
7 that was brought against Miss Roberts based on the
8 evidence and the law presented, will find at the
9 hands of this Jury, either a guilty or not guilty
10 verdict. If that Jury returns a not guilty
11 verdict, then the case would end at that point. If
12 the determination of the Jury is one of guilt, then
13 they would be called upon to sit through a second
14 phase of the trial. And at that phase, the State
15 is required to produce evidence on what we call
16 aggravating circumstances, and that is reasons why
17 the Jury should consider imposing the death
18 penalty, rather than one of the other lessor
19 offenses or sentences. They have to prove their
20 facts beyond a reasonable doubt.

21 The Defense is given an opportunity at
22 that time to present what are known as mitigating

1 factors. And those are things put to the Jury that
2 would mitigate the aggravating circumstances and
3 thereby allow the Jury to disregard the imposition
4 of the death penalty, and think it more appropriate
5 to give a lesser sentence. Because there's nothing
6 in Ohio law that says just because you kill someone
7 illegally, that you are to be put to death. There
8 are other people who -- there are some people who
9 might think that, no, I could never under any
10 circumstances would I want to sit on such a case,
11 because I don't care what anybody did, I could
12 never ask for their life, even though the law may
13 ask her to do that. A person that has an
14 entrenched view on either extreme, should not be on
15 the Jury because they can't do justice to one side
16 or the other.

17 The person that is the ideal juror is
18 somebody with an open mind that is able and willing
19 to accept the law of Ohio; we all have to follow
20 the law. After they make the determinations,
21 determination of fact, if we get to that second
22 phase, and that perhaps is every bit as difficult

1 or perhaps more than the first phase, because it is
2 a very important decision this Jury will make and
3 have to live with, whatever it is.

4 So the questions that will be put to you
5 by these folks will be geared towards what is your
6 view. Do you have any entrenched positions. If
7 you do, that is fine. We're all entitled to our
8 own thinking, but it is whether you could follow
9 the law and be fair and impartial to both sides.
10 There will be some people that won't be able to do
11 that, and that is fine.

12 The other issue that will be put to you
13 is concerning any pre-trial publicity that you may
14 be aware of. Now it is easy for all of us to say I
15 read something about this, but that isn't going to
16 influence me. Every prospective juror has to look
17 within their own heart and they know whether that
18 is true or not. Again, the ideal juror in this
19 matter has to truly be able to say to themselves,
20 whatever the newspaper said or whatever the T.V.
21 said, that isn't the evidence. I have to decide
22 this case on the evidence. That is the only way I

1 can be fair to both the State and the Defendant.

2 The worst thing that could happen, is to
3 have anybody tried in any criminal trial, and
4 particularly one of this magnitude, where one side
5 or the other isn't getting a fair trial. You agree
6 with that?

7 MRS. GRAY: Yes.

8 THE COURT: Mr. Bailey?

9 EXAMINATION BY MR. BAILEY OF MS. GRAY:

10 Q. Good afternoon. I am Ken Bailey, Assistant
11 Prosecutor with the Trumbull County
12 Prosecutor's Office, and like I promised
13 the other day, Chris Becker, another
14 Assistant Prosecutor, my co-counsel, is
15 with me today. And this is the one
16 chance we get to engage in a little
17 conversation with each other until this
18 case is all over, because according to
19 our rules of conduct, if we run into each
20 other out in the hallway or in the
21 elevator, we're not allowed to have any
22 communication with you, except to say

1 good morning or good afternoon. If you
2 have any questions, you have got to
3 address them to the bailiff or to the
4 Court. Laurie is not here right now, but
5 she will be. And we're not being
6 antisocial, but under our rules of
7 conduct, this is the only chance we
8 really get to talk until the trial is all
9 over and if we get into two phases, that
10 means at the conclusion of the second
11 phase.

12 With that, we're going to talk a
13 little bit. If you have any questions
14 about what we're doing here that is
15 pertinent to the proceedings, feel free
16 to ask them at this point because it is
17 sort of a give and take here. It helps
18 us if you have questions, we want to
19 clear those up, too, if we can.

20 Now, let me ask first about this
21 issue of pre-trial publicity. I
22 understand looking at your questionnaire

1 that you get the Tribune only on
2 Saturday?

3 A. And only if I work Friday night and I pick it
4 up on my way home, otherwise we don't get
5 it.

6 Q. And there's a case involving -- there was
7 another fellow by the name of Nate
8 Jackson. You indicated you read the home
9 section, I believe?

10 A. I usually read the home section first and then
11 maybe the front page and a little bit of
12 the inside.

13 Q. You basically skim?

14 A. Yes.

15 Q. You pay close attention to the crime news or
16 no?

17 A. No.

18 Q. And you look at some of the local television
19 channels, right, maybe Fox?

20 A. We watch Fox news. We don't usually watch 27,
21 33, any of those. We very rarely look at
22 those. We're usually on Fox news.

1 Q. The name Donna Roberts, it doesn't ring a
2 familiar bell?

3 A. No.

4 Q. Now it may be during the course of the
5 proceedings, you may recollect having
6 heard something when you hear some
7 testimony, but we're going to ask you to
8 set that aside and determine this case
9 based solely on what you hear here from
10 the witness that is going to take that
11 chair and from any physical Exhibits that
12 are admitted into evidence, and the
13 instructions of law given to you by Judge
14 Stuard. You can do that, I take it?

15 A. I think so.

16 Q. We're going to ask you, also the Judge is
17 going to order you, he already has, not
18 to read the newspaper or watch T.V. or
19 have any communication with anybody about
20 this case while these proceedings are
21 ongoing. And maybe the family member may
22 pick up the newspaper for you, and the

1 reason for this is that when something is
2 reported in the newspaper or there's
3 something on television, the reporter
4 tries to do a feature on what is
5 happening, and you will notice there's
6 nobody from the media here right now?

7 A. I wondered about that when I walked in
8 earlier.

9 Q. Why nobody is here?

10 A. Why they were here.

11 Q. Somebody was here for a minute and they are
12 not allowed to photograph the prospective
13 jurors. They sometimes take a picture of
14 the Attorneys or the Defendant or the
15 Judge, but they are not allowed to
16 photograph the jurors at all. If they
17 show jurors you will notice that they
18 show feet if there's a Jury view, but
19 that is about the size of it. And
20 there's another trial going on
21 downstairs, so the reporters are in the
22 building, and that is probably why they

1 are here. But it may be, we'll see
2 reporters from time to time, T.V.
3 cameras, things like that. But they
4 won't be here very long. Generally, they
5 will be here for a matter of minutes,
6 then a reporter will do a feature,
7 newspaper reporter will write a column on
8 it. But that is based on their few
9 minutes here, and if you have somebody
10 save the papers for you, and at the end
11 of this case if you served on the Jury,
12 you may look at it, and may read those
13 articles and say, "I sat in that
14 Courtroom for the entire trial and that
15 reporter who was here for a few minutes,
16 what he put in the paper was totally out
17 of context, because he missed everything
18 that happened before he walked in and he
19 missed all of the questions that came
20 after he left and the testimony was just
21 the opposite of the impression he gives
22 in the newspaper." It is really not fair

1 to rely on what is in the newspaper. You
2 are going to hear it firsthand. It is
3 like going back to school and starting
4 out with a clean slate. Whatever is
5 going to be written on the board is going
6 to be here in this Court.

7 I take it you would agree that would
8 be the fair thing to do to both sides,
9 both to the Defendant and the people of
10 the State of Ohio, right?

11 A. Yes.

12 Q. Let's talk about the death penalty for a
13 minute as a possible punishment. This is
14 a death penalty case where the Defendant
15 is charged with -- she's charged with
16 four different crimes. Two counts of
17 aggravated murder, even though there's
18 only one death here. There are two
19 separate charges of aggravated murder,
20 which the State is allowed to do, and
21 there are two other crimes called
22 aggravated burglary and aggravated

1 robbery. By the case, the counts, the
2 charges that involve the death penalty,
3 are the counts of aggravated murder with
4 specifications of aggravating
5 circumstances. That is where the death
6 penalty could come in as a possible
7 punishment.

8 Now, I understand, reading your
9 questionnaire you favor the death penalty
10 for certain crimes?

11 A. Right.

12 Q. And I take it that would be in cases of
13 murder?

14 A. Right.

15 Q. Now you understand the legislature sets down,
16 writes the law and they set down the
17 possible penalties. The Judge is going
18 to instruct you as to the law at the end
19 of this case.

20 Now, do you understand that this
21 case can be tried in two different
22 phases? You read a little handout

1 downstairs an orientation instruction,
2 and the first phase deals with the issue
3 of guilt or non-guilt where the State has
4 to prove the entire burden of proving the
5 elements of the crimes are entirely on
6 us, the people of the State, and we have
7 got to convince you of the elements, the
8 essential component parts of these
9 charges by proof beyond a reasonable
10 doubt. If we do, if you and the other
11 jurors go back and you deliberate and you
12 find that we met our burden beyond a
13 reasonable doubt so that you are firmly
14 convinced of the truth of the charges to
15 a moral certainty of aggravated murder
16 and one or more of these specifications,
17 these special findings of fact, then we
18 would move on to a second phase.

19 And in that second phase, the issue
20 there is not of guilt or non-guilt,
21 because you would have already decided
22 that, the issue would be what is the

1 appropriate punishment for this
2 Defendant, for this crime. You
3 understand that if you find the Defendant
4 guilty in the first phase, the death
5 penalty is not an automatic punishment
6 under the law?

7 A. Right.

8 Q. That you have to consider all of the
9 penalties. Now, in the second phase, the
10 reason for this, that it is not automatic
11 is because you wouldn't have heard
12 anything that relates to mitigating
13 factors. Things that would work in favor
14 of the Defendant, and against the death
15 penalty as a possible punishment.

16 And then there's a balancing test
17 that the Judge will instruct you on.
18 Basically, you have to weigh the
19 aggravating circumstances or aggravating
20 circumstances against any mitigating
21 factors presented. And what these
22 mitigating factors are, I can't tell you

1 at this time, because it is not relevant.
2 We don't know what they are, but the
3 Defense has an opportunity to present
4 evidence as to these mitigating factors,
5 things that will work to a Defendant's
6 benefit. And then you would do this
7 balancing test.

8 Now if you find that the aggravating
9 circumstance or circumstances outweigh
10 these mitigating factors by proof beyond
11 a reasonable doubt, then you must return
12 a death penalty verdict. You understand
13 that?

14 A. Yes.

15 Q. On the other hand, if you find that we don't
16 prove that the aggravating circumstance
17 or circumstances outweigh the mitigating
18 factors by proof beyond a reasonable
19 doubt, then you must go on under our law
20 to consider the other three possible
21 punishments; the punishment of life in
22 prison without parole; the sentence of 30

1 full years in prison before parole
2 eligibility up to life; and life in
3 prison with parole eligibility after 25
4 full years. You understand that?

5 A. Yes.

6 Q. Now, I notice in your questionnaire, that you
7 indicated that you thought that if
8 somebody were convicted of a murder
9 charge or aggravated murder, that you
10 felt that there shouldn't be any
11 possibility of parole, I think is what
12 you indicated?

13 A. I'm not sure what the difference is between
14 murder and aggravated murder.

15 Q. Okay. Let me explain. We are, the
16 legislature writes the laws. And they --
17 there are different kinds of killings.
18 Some killings could be accidental.
19 Somebody slides on the ice, they are
20 doing 25 miles an hour in a 50 mile an
21 hour zone and they hit some black ice and
22 slide and somebody gets killed. That

1 could be an accident, or somebody could
2 be chopping some wood and the head of the
3 axe flies off and kills somebody standing
4 nearby. I take it, you would agree there
5 shouldn't be any punishment for that?

6 A. Right.

7 Q. There are other types of killings that are
8 more serious. There are killings that
9 arise out of a traffic accident -- or
10 let's say not a traffic accident, but a
11 traffic crash, where somebody may be
12 driving drunk and killed somebody. I
13 take it you would agree the death penalty
14 would not be an appropriate punishment
15 for that. Maybe the person should go to
16 prison. Then there are other killings
17 that occur. Let's say there's a bar
18 fight and somebody punches somebody and
19 the victim falls down and hits his head
20 against the table and dies as a result of
21 that. That might be a manslaughter
22 charge. I take it, you would agree the

1 death penalty wouldn't be warranted for
2 that, a prison sentence perhaps?

3 A. Right.

4 Q. Then there are other killings, and those, they
5 have special names for those killings,
6 but then we have murders and aggravated
7 murders. Basically a murder is when
8 somebody kills somebody on purpose. And
9 under our law, there's no death penalty
10 for just a plain murder where somebody
11 killed somebody on purpose. You may
12 think that there should be a death
13 penalty, but there would be a different
14 punishment. Some type of prison
15 sentence.

16 Then there are more aggravating
17 circumstances that would apply to crimes
18 of aggravated murder. The legislature
19 writes the law and says that for example
20 if somebody killed somebody on purpose,
21 with prior calculation and design, that
22 is one type of aggravated murder. And

1 there's another type of aggravated murder
2 where somebody may kill somebody on
3 purpose in the course of committing a
4 special felony, like an aggravated
5 robbery or aggravated burglary. That is
6 another type of aggravated murder. And
7 that carries a certain penalty.

8 The legislature sets forth certain
9 things called aggravating circumstances,
10 death penalty specifications. That could
11 be attached to a charge of aggravated
12 murder. Because the death penalty is not
13 something that should be applied lightly.
14 Would you agree about that?

15 A. Right.

16 Q. It should be applied only in special cases in
17 the worst of crimes?

18 A. Right.

19 Q. And the legislature writes the laws, so that
20 they set down certain factors that may
21 apply, and if those factors are charged
22 and then a Jury considers those at a

1 trial, and then if the Jury finds the
2 Defendant guilty of a crime called
3 aggravated murder and one or more of
4 these special circumstances, special
5 findings of fact, then the death penalty
6 could be a possible punishment. Does
7 that help answer your question?

8 A. Yes, a little bit.

9 Q. We're in one of those types of cases where
10 there are these -- the Defendant is
11 charged with a crime called aggravated
12 murder, and one or more of these special
13 circumstances were alleged. And there
14 are two different theories of it. One of
15 these is the prior, the purposeful
16 killing with prior calculation and design
17 on the one hand with these circumstances;
18 and the other is purposeful killing
19 during the commission of a special felony
20 like aggravated robbery, or aggravated
21 burglary.

22 A. Okay.

1 Q. Now, could you -- you had indicated on your
2 questionnaire that you thought that there
3 shouldn't be any possibility of parole
4 for certain types of crimes?

5 A. Yes.

6 Q. Now that may be, that would be your own
7 personal belief, is that right?

8 A. Yes.

9 Q. Is that based on personal religious, moral or
10 ethical belief or some combination
11 thereof?

12 A. I think it just is based on the fact that if
13 somebody kills somebody on purpose, I
14 don't think they should be back on the
15 streets. So I don't believe they should
16 be eligible for parole.

17 Q. That is your own personal feeling?

18 A. Right.

19 Q. You understand that the legislature doesn't --
20 didn't write the law that way.

21 A. Okay.

22 Q. And the legislature says that you have to

1 consider certain penalties to be fair to
2 both sides, and it is important --

3 A. I am basing mine not on any kind of law,
4 because I don't know what law is, I don't
5 know what the law is.

6 Q. If the Judge tells you that if you find the
7 Defendant guilty of aggravated murder,
8 with the death penalty specification and
9 then you do this balancing test where you
10 find that the aggravating circumstance or
11 circumstances outweigh the mitigating
12 factors beyond a reasonable doubt, would
13 you be able to come back with a death
14 penalty verdict?

15 A. If that is the way it came out.

16 Q. And let's say it didn't come out that way.

17 Let's say you looked at the evidence and
18 we failed to meet our burden of proof.
19 Let's say we didn't convince you beyond a
20 reasonable doubt that the aggravating
21 circumstances outweighed the mitigating
22 factors by proof beyond a reasonable

1 doubt, so then you would have to go on
2 and consider the other three possible
3 punishments; the punishment of life
4 without any possibility of parole; the
5 punishment of life in prison with parole
6 eligibility after 30 full years; and life
7 in prison with parole eligibility after
8 25 full years. And you would have to get
9 together with the other 11 jurors, and
10 then decide based on whatever evidence
11 that you hear, what the appropriate
12 punishment would be for this Defendant.
13 Could you treat all of those three
14 equally and look at them equally, if the
15 Judge told you to look at them equally as
16 possible punishment before making up your
17 mind?

18 A. If that is the way the rules go, then I would
19 have to follow the rules.

20 Q. You would follow the law?

21 A. Yes.

22 Q. You wouldn't take your own personal belief

1 against any possibility of parole, then
2 I'm going to automatically come back with
3 that verdict?

4 A. No, not automatically. Individual to follow
5 the law.

6 Q. It may well be based on what you hear, that
7 you decide that one of the lesser
8 punishment would be appropriate?

9 A. Yes.

10 Q. You keep an open mind?

11 A. Yes.

12 Q. Now it may well be, after you hear all of the
13 evidence, and you and the other jurors
14 deliberate that you may say, life without
15 parole would be the appropriate
16 punishment in this case. You may reach
17 that conclusion, but you would consider
18 them all equally, right?

19 A. Yes.

20 Q. Now, I mentioned the Defendant is charged here
21 with two counts of aggravated murder with
22 specifications. And these crimes, as

1 well as aggravated robbery and aggravated
2 burglary. And the Defendant is charged
3 not as the trigger person, but rather as
4 an complicitor. I think you will find
5 the State's allegation is that a fellow
6 by the name of Nate Jackson was the
7 person who actually did the killing, who
8 committed the aggravated burglary and the
9 aggravated robbery, but the Defendant is
10 charged as a person who solicited or
11 procured or aided and abetted this Nate
12 Jackson. They planned in advance, this
13 killing. So it was done with prior
14 calculation and design on purpose. And
15 these specifications, these death penalty
16 specifications, are first that there's
17 a -- there's aggravating circumstances of
18 aggravated burglary, that the aggravating
19 murder was committed during the course of
20 an aggravated burglary, and the
21 aggravated murder was committed with
22 prior calculation and design.

1 And there's a second specification,
2 the death penalty specification that the
3 aggravated murder was committed during an
4 aggravated robbery and it was committed,
5 the Defendant committed the aggravated
6 murder even though it was committed by
7 this Nate Jackson, with prior calculation
8 and design. And there's a firearms
9 specification in there, that a working
10 gun was used.

11 A. What is the legal difference between robbery
12 and burglary?

13 Q. The Judge will define that for you. Basically
14 aggravated burglary is breaking, it is
15 trespassing by force, stealth or
16 deception into a dwelling, or separately
17 secured portion of that dwelling with the
18 intent to commit a crime inside, a felony
19 or some other crime. And there are other
20 things that will apply, but the Judge
21 will tell you. It is really crossing the
22 threshold when you are not supposed to,

1 with that intent to commit some crime and
2 somebody is present and you cause serious
3 physical harm to that person or you have
4 a weapon, and aggravated robbery is when
5 you steal something. You are already
6 inside. Or you are fleeing immediately
7 after committing a crime, and you steal a
8 car or something. And you use force and
9 violence. You have a weapon or
10 something -- in this case a gun.

11 A. Okay.

12 Q. And you hurt someone or kill somebody. I know
13 people in every day life often use those
14 terms interchangeably. Say I was robbed.
15 I came home and my house was robbed. If
16 they were held up and somebody has forced
17 violence against them or somebody used
18 force and violence on you on the street
19 to steal your money, that would be a
20 robbery.

21 Now, these crimes are composed of
22 certain elements, and I'm not going to go

1 into them in detail, because the Judge is
2 going to instruct you on them at the end
3 of this case. But for example, let's
4 say, we have to show that it happened on
5 or about a certain date and time, like
6 December 11, 2001. That it happened here
7 in Trumbull County, in the State of Ohio,
8 so we can try the case in this Courtroom,
9 rather than in Cuyahoga County. Third,
10 that it was committed by the Defendant,
11 and we have to have somebody identify the
12 Defendant. Fourth, let's say take a
13 charge of aggravated murder, that she did
14 it purposely, and the Judge will define
15 that term for you in great detail at the
16 conclusion of this case, so and here
17 she's charged as a complicitor, not the
18 actual trigger person, that she caused
19 the death of Robert Fingerhut and that it
20 was done with prior calculation and
21 design. That is an example of elements,
22 the essential component parts of a crime.

1 It is like the ingredients in a recipe.

2 You have baked before?

3 A. Yes.

4 Q. We have got to use the recipe in filling all
5 of those ingredients. If we leave one of
6 the ingredients out, then we may have
7 somebody -- if we left the chocolate out
8 in a chocolate cake, it would be a cake
9 but not the chocolate cake that we
10 promised to make. That is our burden of
11 proof. We have to put in all of those
12 ingredients. It may well be that you
13 have some special interest like in
14 something, if you sold shoes you might be
15 interested in foot wear. What was
16 somebody wearing at the time of the
17 crime. We may never answer that, because
18 it doesn't go to the elements. We're
19 going to have our focus of the evidence
20 on the elements of the crime, proving the
21 elements, the essential component parts
22 of the crime, and we may never get to

1 some things that you might be interested
2 in, but if we can convince you beyond any
3 reasonable doubt of the truth of the
4 charge, these elements, could you return
5 a conviction?

6 A. Yes.

7 Q. You are a nurse?

8 A. Yes.

9 Q. As an R.N., you work at the hospital. You
10 ever deal with gunshot victims?

11 A. We don't deal with that very much up on our
12 floor. We're a cardiac floor. Generally
13 they go to the surgical floor.

14 Q. Have you ever in your career worked on gunshot
15 victims?

16 A. I think I have had them post surgery, but
17 never before.

18 Q. You may hear different types of evidence.
19 There's when we have direct evidence
20 where a person can come in and testify to
21 something he's learned through the use of
22 his five senses. "I heard the gunshot

1 and it was loud," or "I smelled the
2 smoke," or "I touched the body and it was
3 cold."

4 But there's another way of proving
5 elements. Sort of a round about way. We
6 call it circumstantial evidence. You
7 have heard that term before. And it is
8 where we present a fact or series of
9 facts and ask you to draw logical
10 deduction to another fact or facts, which
11 you are allowed to do. It is basically,
12 it is piling evidence on evidence. And
13 then making your own decision as if
14 there's enough. Can you follow what the
15 Judge tells you the law is on this?

16 A. Yes.

17 Q. And you understand that circumstantial
18 evidence is just as good as direct
19 evidence? Often times, would you agree
20 that often times crimes are committed in
21 secret without a whole lot of people
22 around?

1 A. I would imagine.

2 Q. Especially something like an aggravated
3 murder, right? If somebody plans in
4 advance to kill somebody, generally they
5 are not going to blurt it out to the
6 whole world and tell them, "Hey, I'm
7 going to kill my ex-husband to get the
8 insurance money" or something?

9 A. Right.

10 Q. If you don't have somebody telling you that in
11 person, you have to rely on other types
12 of evidence; would you agree with that?

13 A. Right.

14 Q. You might have to rely on things like the
15 person's actions or a person's
16 communications, if you have letters or
17 things like that, where the person has
18 written something or phone calls, where
19 you can hear what the person says about
20 them, right, or look at the person's
21 actions beforehand and afterward or at
22 the time that this is going on. If you

1 have witnesses to testify to that. And
2 would you be able to look at all of those
3 facts and circumstances, and then make
4 your own conclusions as to whether it
5 proves the elements of the crimes
6 charged?

7 A. Yes.

8 Q. The charge here is that the crime occurred
9 here in Trumbull County, and in Howland
10 Township, in a residence located on
11 Fonderlac in Howland. Are you familiar
12 with that area?

13 A. I'm not quite sure where Fonderlac is.

14 Q. One thing -- well, that is good. We want to
15 make sure that jurors don't go out on
16 their own to investigate. If you are
17 taken there, it would only be by a view
18 of the scene when you are accompanied by
19 the bailiff. Other than something like
20 that, can you assure us that you were not
21 going to go out on your own to the
22 neighborhood to investigate?

1 A. I can assure you of that.

2 Q. Because we have actually -- we had a case once
3 where a juror went out and did his own
4 investigation and they do that sometimes
5 in the movies, but that would cause a
6 mistrial and you would have to do it all
7 over again. We wouldn't want anything
8 like that to happen?

9 A. No, I don't think so. I have enough
10 investigation to do at work.

11 Q. You understand that you are stuck with the
12 questions that the lawyers ask. Because
13 we're lawyers, we look at these elements
14 of the crime and questions generally are
15 geared to proving or disproving these
16 particular elements. You understand you
17 are not allowed to ask questions of your
18 own. Sometimes on T.V. programs and
19 sometimes in other states, jurors may be
20 allowed to submit questions to a Judge
21 and have the Judge ask them. You might
22 see that on Court T.V. or some place, but

1 that doesn't happen in this state. And
2 one thing you can't do here is you can't
3 take notes.

4 A. Okay.

5 Q. You have to remember the testimony. Sort of
6 like going back to school without the
7 notes and being asked, it's like when we
8 had radio. Everybody listened to the
9 radio.

10 A. I remember radio.

11 Q. And remember those old radio programs where
12 you would pay close attention? Today the
13 kids look at Sesame Street and they got a
14 15 second attention span, but we would
15 have to rely on what we heard and we have
16 to remember it. That is what we're going
17 to ask you to do, to remember the
18 testimony.

19 This may take up to two weeks of
20 trial in the first phase, and we would
21 ask you and your other jurors to pay very
22 close attention to the testimony and the

1 evidence, and then when you go back to
2 deliberate you will have your collective
3 recollection. You understand you won't
4 be getting instant transcripts like they
5 did in the O.J. Simpson trial. I think
6 they did, but they had millions of
7 dollars to pour into Court Reporter
8 equipment and a lot of Court Reporters.
9 Mary Ann doesn't have the ability here.
10 I'm sure she wishes she does, but she
11 can't get out instant transcripts, so you
12 won't be getting transcripts of that
13 testimony to take back in the Jury room
14 to review. You are going to have to rely
15 on your collective recollection.

16 A. Can they ask for a clarification? I think I
17 have seen that somewhere or to have
18 something read back to them.

19 Q. That depends on the Judge, but generally the
20 question is, "Can we have the testimony
21 of so and so?" And the answer is that
22 the Judge is going to give you is, "No."

1 A. Just asking.

2 Q. That is okay. Doesn't hurt to ask, but
3 generally that is what happens. So that
4 is why it is so important that all 12
5 jurors pay very close attention. No
6 instant replays, unlike the T.V.
7 programs.

8 A. I don't like that in football anyway.

9 Q. Now, during the course of the trial, you are
10 going to be face to face with the
11 Defendant and perhaps during the course
12 of the trial as you come face to face
13 with her and as her chair is turned
14 towards you, you are going to become more
15 acquainted with her. My question to you
16 is this. When you go back inside the
17 Jury room to deliberate on your verdict
18 at the conclusion of this case, can you
19 lay aside all thoughts you might have of
20 sympathy and be conscientious in your
21 deliberations and base your verdict on
22 the evidence that you hear, and the

1 instructions of law given to you by the
2 Judge, and lay aside all thoughts
3 whatsoever of sympathy that you might
4 have for the Defendant?

5 A. I think I would try very hard. I can't
6 promise that it would be absolute.

7 Q. I know it is human to feel compassion for
8 people. There's nothing wrong with that.

9 A. Unfortunately that is my job.

10 Q. As a nurse. Your job is to save lives?

11 A. Right.

12 Q. What we're asking you to do -- well, in the
13 first phase, you understand that
14 punishment has no bearing on the first
15 phase?

16 A. Right.

17 Q. It is a question of guilt or non-guilt?

18 A. Right.

19 Q. But let's say we get to the second phase as to
20 what the appropriate punishment is. It
21 is okay to feel compassion. It is okay
22 to feel sympathy for a person, but could

1 you make your decision based on the
2 evidence and the law?

3 A. And I would try very hard.

4 Q. That is all we can ask you to do.

5 A. That is as much as I can say.

6 Q. That is fair, that is all we can ask. Just
7 both sides get a fair shake in this
8 trial. Do you have any other pressing
9 matters at home or work that are going to
10 affect your ability to concentrate on the
11 evidence for two weeks of the trial?

12 A. No.

13 Q. Now there's something called sequestration.

14 At the conclusion of the first phase when
15 the Jury goes out to deliberate, you are
16 sequestered. That means you are kept
17 separate and apart from the general
18 public. You are kept in the hotel if it
19 takes that long to make a decision.
20 Every Jury is different. It could take
21 hours, it could take days, we don't know.
22 Let's say we get into a second phase.

1 You would go home in between. You are
2 told not to read the papers or any
3 publicity, and then in the second phase,
4 you would come back in, you would hear
5 more testimony or evidence, and then the
6 Judge would instruct you on the law
7 again. And when you go back to
8 deliberate in the second phase, at that
9 point, you would be sequestered again.
10 And again, we don't know how long that
11 will take, but I expect the testimony
12 phase, would take maybe generally one to
13 three days generally. And then
14 deliberations, however long it takes for
15 jurors to decide, because every Jury is
16 different. Would that cause any hardship
17 for you?

18 A. No. My husband won't be too thrilled, but he
19 will live with it.

20 Q. I take it you would agree that there's certain
21 obligations of citizenship that we have
22 in this country?

1 A. Right.

2 Q. One of them would be at election time we vote.

3 Another is if we're at war, we serve in
4 the military if we're called to do so and
5 we have young people overseas today in
6 several areas. And a third obligation of
7 citizenship would be to serve as jurors
8 if we're summoned, to make sure that our
9 American system of justice works. You
10 would agree with that?

11 A. Yes.

12 Q. Would you be willing to undertake that
13 obligation of citizenship and serve as a
14 juror in this case?

15 A. Yes.

16 MR. BAILEY: Thank you very much.
17 The Defense Attorney will have an opportunity to
18 ask you some questions.

19 EXAMINATION BY MR. JUHASZ OF MS. GRAY:

20 Q. I'm going to move this a little bit so that
21 Jerry can see. The Judge had us
22 introduce ourselves the other day. My

1 name is John Juhasz, my friend Jerry
2 Ingram and I are representing Donna
3 Roberts. Donna, as you know everything
4 you have read and what you have read, is
5 on trial for her life. This is an
6 important thing for us. I know it is a
7 little bit frustrating, maybe even
8 annoying for you to sit here and answer
9 these questions, but it is kind of like
10 being interviewed for a job. We want to
11 find out something about you and about
12 your qualifications for the job, and as
13 even Mr. Bailey suggested to you, you
14 also have the chance to ask some
15 questions too, just like you would for a
16 job interview. You appreciate that?

17 A. Right.

18 Q. The only difference instead of you applying
19 for the job, someone sent you a little
20 yellow paper and told you to come to
21 Court?

22 A. Yes.

1 Q. There aren't many ground rules as to what
2 we're doing here today other than as
3 Judge Stuard said the other day, tell us
4 honestly what you think or what you feel.
5 And if you have some question or you
6 don't understand something I'm asking
7 you, please ask, just like when you asked
8 Mr. Bailey the difference between robbery
9 and burglary. Fair enough?

10 A. Right.

11 Q. This case is essentially about Donna Roberts
12 and Robert Fingerhut who were divorced,
13 but after they were divorced, they
14 continued to live together over on
15 Fonderlac in Howland and they also worked
16 together at the Youngstown and Warren
17 Greyhound Bus Stations. And what the
18 case is about essentially is the
19 Government's claim or allegation that
20 Donna Roberts was involved with another
21 fellow by the name of Nate Jackson and
22 they planned or made up a plot to kill

1 Mr. Fingerhut. Now, if you are selected
2 as a juror during the course of this
3 case, you are probably going to conclude
4 fairly quickly that Mr. Jackson was
5 involved in this case, but the reason I
6 bring that up is to make certain that you
7 understand that this trial is not about
8 Mr. Jackson. It is about Donna Roberts
9 and about whether she had anything to do
10 with Mr. Fingerhut's death. Do you
11 appreciate that?

12 A. Yes.

13 Q. During the course of the trial, if you are
14 picked as a juror, some of the things
15 that you may be exposed to in the way of
16 evidence would be letters written by
17 Donna, or phone conversations which were
18 recorded between Donna Roberts and Nate
19 Jackson. And I'm going to tell you that
20 some of those items are sexually explicit
21 and probably offensive. Now, you
22 mentioned a few moments ago that you have

1 compassion and that is part of your job,
2 correct?

3 A. Right.

4 Q. And I think you would agree with me that part
5 of your job is to be able to sort of use
6 that compassion constructively, but still
7 objectively do whatever it is medically
8 that you have to do to help that person
9 you are charged with, correct?

10 A. Correct.

11 Q. The reason I bring that up is if it calls for
12 you to sort of set that compassion aside
13 and say, "Geez, I know I'm going to hurt
14 this person when I stick this needle in
15 their arm, but it is really for their
16 benefit. That is what I have to do."
17 You are able to do that, correct?

18 A. Yes.

19 Q. If you hear the type of evidence in this case
20 that would offend you, would offend just
21 about anybody, my question is, do you
22 think you would be able to set aside any

1 feelings of offense that you might have
2 and be able to say, "Well, okay, what
3 does this mean in terms of whether the
4 Government is able to prove or not prove
5 their allegations against Miss Roberts?"
6 Do you think you could do that?

7 A. I think so. I hear offensive things every
8 night.

9 Q. If I understand it, you don't really recall
10 hearing anything about Miss Roberts, the
11 allegations against her about being on
12 trial or anything like that?

13 A. No, I don't.

14 Q. When I said that is okay, that is all right.
15 That is what lawyers like actually. When
16 I said the name Nate Jackson or when I
17 think Mr. Bailey said it earlier, did
18 that ring a bell with you?

19 A. No.

20 Q. Have you heard -- I know that although I have
21 never been a juror, I know from doing
22 this kind of work for awhile, that Juries

1 experience a lot of things, including
2 sometimes generating some apprehension,
3 because you come to the Courthouse and
4 you don't know what the heck is going to
5 happen. The reason I bring that up is
6 I'm interested in finding out, have you
7 heard the case discussed since you have
8 been in the Courthouse for Jury service?

9 A. No, I haven't heard anything going on here,
10 except for what the Judge has told us and
11 what you guys have told us.

12 Q. I don't think this is going to be a problem
13 for you based upon what you have said.
14 And I think Mr. Bailey covered this a
15 little bit. It is important and I think
16 Judge Stuard alluded to this the other
17 day, it is important that if you are
18 picked as a juror on this case you decide
19 the case from what you hear in the
20 Courtroom, not from what the news media
21 or anybody else outside the Courtroom has
22 to say. Would you agree with that?

1 A. Absolutely.

2 Q. There are any number of famous U.S. trials
3 everywhere from Rodney King to O.J.
4 Simpson to William Kennedy-Smith, you
5 name it. And it is probably easy for
6 people to watch that news coverage and
7 draw their own opinions and say, either
8 that Jury was right or what the heck was
9 that Jury thinking of. But you see,
10 don't you, that we, not being at that
11 trial, all of us, didn't have the
12 advantage of seeing or hearing what that
13 Jury heard and saw. Does that make sense
14 to you?

15 A. Right.

16 Q. So you think you could avoid the temptation to
17 say, "Well, let me see what they are
18 talking about, about the trial I am
19 involved in today on the T.V. or in the
20 newspaper."

21 A. Like I said, we listen to Fox news and
22 basically, we have been listening to the

1 war news lately. Generally, we listen
2 more to National news, unless it is
3 around election time and then we try and
4 get some insight on who is running for
5 what; but otherwise, we don't generally
6 listen to local news.

7 Q. Even if you don't follow the news, if you are
8 selected for this Jury, people you know,
9 family, friends, work acquaintances,
10 whatever may say, she's on that Jury, and
11 they may try to talk to you about it.
12 First of all, you understand that if you
13 are selected as a juror, one of the
14 things Judge Stuard is going to tell you,
15 if somebody tries to do that, you have to
16 say, "I can't talk about it"?

17 A. And the only person that knows anything about
18 this is my manager and the coordinator,
19 and as far as I'm concerned, that is as
20 far as it goes.

21 Q. We like jurors to keep an open mind. In fact
22 a lot of times, we like to say that we

1 like jurors to come in with their minds
2 as blank as that board over there behind
3 you, so that we can without any
4 preconceptions on the part of the jurors,
5 we can just say, "Here's the evidence."
6 As Mr. Bailey said, we as lawyers sort of
7 focus on the elements and have you make a
8 decision. There's another aspect to that
9 open mind thing, however, and that is
10 just because we have to put some
11 structure to the trial, the State goes
12 first in the case, because they have the
13 burden of proof. And just so that we
14 don't argue about me or Mr. Bailey or
15 Mr. Ingram or Mr. Becker saying, "I want
16 to go, I want to go," we have rules about
17 how things are presented. Does that make
18 sense to you?

19 A. Yes.

20 Q. When the State is presenting its evidence, it
21 is important -- do you see that you are
22 not to come to any conclusions just based

1 upon what you hear from the State's
2 evidence, that it is important to wait
3 until you hear everything. Does that
4 make sense to you?

5 A. Yes.

6 Q. I have a story that I like to tell about that,
7 and usually whenever I am telling a
8 story, I either make me or my son somehow
9 involved in the story. I often tell this
10 story in Youngstown, so I'll change the
11 geography just a little bit. I want you
12 to pretend for a little bit that I am on
13 trial for a murder and that the claim is
14 out here at the corner of Market Street
15 and Pine Street that I got out of a car
16 and walked up to somebody and shot them
17 at 4:00 on January the first. And let's
18 assume that in the course of that trial
19 the Government produces a witness who
20 gets on the stand and says basically
21 that. "I saw that guy get out of his car
22 at that intersection and shoot somebody

1 else at that time and on that date."

2 Now, that is not looking so good for me
3 at that point, wouldn't you say?

4 A. True.

5 Q. But let's assume that I hired Ben Matlock and
6 Ben Matlock, as he usually does, instead
7 of following the rules of evidence, he
8 pulls an exhibit out of his pocket and he
9 goes up to that witness now in what we
10 call cross examination and says, "You
11 know, I have got a receipt here from
12 Kaufmann's at the Southern Park Mall down
13 in Youngstown, and it is dated January
14 1st, at 4:00. Looks to me like you were
15 down at Southern Park Mall buying a suit
16 that day, weren't you?" The guy says,
17 "As matter of fact, I was." Now the case
18 is looking a little better for me,
19 wouldn't you agree?

20 A. Yes.

21 Q. And the reason I like to tell that story is if
22 you had just made a decision about my

1 guilt when you heard the witness testify
2 when the Prosecutor was asking him
3 questions, I would be, as the phrase
4 goes, toast. But now that you have heard
5 the cross examination, maybe you might
6 have a reasonable doubt that we'll talk
7 about later. Does that make sense to
8 you?

9 A. Yes.

10 Q. Now do you think you can take that idea and
11 translate it to this whole trial, that
12 is, not make up your mind about anything
13 until you have heard everything in the
14 case?

15 A. Yes.

16 Q. We talked a couple of minutes ago about some
17 of those famous U.S. trials like O.J. and
18 Rodney King and like that. This case
19 won't get that kind of coverage, but it
20 may get some coverage and it is popular
21 even on the local talk shows for people
22 to do what I was talking about earlier,

1 which is to say, "What was that Jury
2 thinking? How in the world could they
3 come up with that verdict?"

4 Now here's why I bring that up in
5 connection with this case. Regardless of
6 what the evidence persuades you of, if it
7 persuades you that Donna Roberts is
8 guilty or if it persuades you that Donna
9 Roberts is not guilty, that the State
10 hasn't proved their case, would you
11 hesitate in any fashion to vote what you
12 felt the evidence showed just because you
13 would sit back there and go, "I can't
14 come up with this verdict. As a Jury,
15 we're going to get lambasted in the news
16 media or the talk radio."

17 A. I don't think so.

18 Q. You wouldn't hesitate to do that? And so, if
19 in this case, you felt that the State had
20 not proved its case beyond a reasonable
21 doubt, you wouldn't hesitate to vote not
22 guilty?

1 A. Right.

2 Q. This is, of course, a death penalty case and
3 you have been asked some questions about
4 your views on the death penalty. I'll
5 try not to reiterate what has already
6 been talked about. But I have one
7 concern as Donna's lawyer. Earlier, I
8 said that we have to have a procedure to
9 everything so the lawyers aren't getting
10 up and saying, "Let me go first. Let me
11 go first." One of those procedures is
12 that even though as you know from reading
13 that paper that you were given this
14 afternoon, this case might not get to a
15 second phase. Here we're asking you all
16 sorts of questions about punishment that
17 you may never have to get to. And my
18 concern is, is the fact that we're
19 talking to you about it, give you any
20 inkling or impression that Donna must be
21 guilty because they are already talking
22 to me about what the penalty is in this

1 case?

2 A. I think it was made quite clear in the
3 beginning.

4 Q. Now I want to ask you just a couple of
5 questions about, I think you have made
6 your views pretty clear about the death
7 penalty. What I wanted to make certain
8 is are you able to distinguish between
9 what your own views are, and what the law
10 is, particularly if what Judge Stuard
11 tells you the law is, is different from
12 your own views.

13 A. I think so.

14 Q. And let me -- and this seemed, I sort of got a
15 troubled or maybe a surprised look on
16 your face when Mr. Bailey was talking to
17 you about murder. Whether any of us
18 agree with it or not, and I can candidly
19 tell you that probably everybody in this
20 room who is a lawyer or a Judge, there's
21 something about the law that we don't
22 agree with, but we all took an oath to

1 uphold. Does that make sense to you?

2 A. Right.

3 Q. And similarly, you take an oath as a juror
4 that you are going to follow the law, so
5 just like we have to set aside our
6 disagreements, you would have to do the
7 same thing.

8 A. Right.

9 Q. If I were to pull out a gun right now and
10 shoot Mr. Ingram -- I meant to do it. It
11 wasn't like Mr. Bailey was talking about
12 accidents or the head flew off the axe or
13 whatever. I pulled out a gun and I shot
14 Jerry because I wanted to. That would be
15 murder. And you may find that to be a
16 heinous thing, and indeed it is, but the
17 legislature in our state has said that I
18 don't get the death penalty for that.
19 I'm not eligible for that. Even if I
20 planned it. Even if I said, "Tomorrow,
21 I'm going to bring a gun to Judge
22 Stuard's Court and I'm going to pull it

1 out and I'm going to shoot Jerry and kill
2 him." That is what we call prior
3 calculation and design. And that is what
4 we call actually one form of aggravated
5 murder. And again, even though you may
6 find that to be heinous and I may find
7 that to be heinous, in our state, without
8 something more than that, I can't get the
9 death penalty.

10 A. Okay.

11 Q. Now you may disagree with that, but that is
12 the law in this state.

13 A. Okay.

14 Q. There has to be something more and that is
15 these specifications or aggravating
16 circumstances that you have been given
17 papers about. Now you seem to have some
18 concerns about somebody who does even
19 those things that I described, because I
20 did it on purpose, getting out on parole.
21 Correct?

22 A. Yes.

1 Q. And that again is okay. Because as Judge
2 Stuard said to you earlier, we're not
3 here to debate you or try to change your
4 minds about what your feelings are, we're
5 just simply here to find out if okay, "I
6 have those feelings, these are my
7 thoughts about how the legal system
8 should be, but the Judge and the lawyers
9 are telling me it is not that way, so I
10 have to follow what they say." We want
11 to make sure you can do that.

12 A. Okay.

13 Q. Two of the options if we would get to a second
14 phase in this case, would involve the
15 possibility, not the guarantee, because
16 what may be nobody has said clearly
17 enough for you today, is that if you get
18 one of those sentences of life
19 imprisonment with a possibility of parole
20 after 30 full years or after 25 full
21 years, all that does is get you a chance
22 to go in front of the parole board and

1 say, "Hey, let me out. I'm sorry. I
2 have been a good person," whatever
3 argument you wanted to make. And I don't
4 know if you have saw the Shawshank
5 Redemption or not, but the Morgan Freeman
6 guy, they stamped his thing and said
7 "Rejected". That's the same thing here.
8 It doesn't mean that the person gets out.

9 Now having said all of that, what I
10 need to know is, even though that may not
11 square with those two options, may not
12 square with your own personal feelings,
13 would you be able to set your feelings
14 aside and if we got to a second phase,
15 consider all of those options fairly and
16 equally?

17 A. I would have to consider them.

18 Q. Is there anything about how you feel that
19 would make you say, "Well, I'll consider
20 them, but listen, she doesn't have a shot
21 at getting either the 25 or the 30 year
22 sentence from me, because it just isn't

1 right in my mind"?

2 A. I couldn't say that now.

3 Q. So you, at least you would be willing, even if
4 those don't square with how you think the
5 law should be, you would be willing to
6 set that aside and say, "I'll consider
7 them all and I'll listen objectively to
8 whatever evidence is presented to me
9 about what penalty," if we get that far?

10 A. Right.

11 Q. Because you believe that the death penalty is
12 appropriate for some crimes, is there
13 anything about your feelings about the
14 death penalty that would make you, if you
15 found a person guilty at the first phase
16 of aggravated murder and at least one of
17 the specifications, that would make you
18 say, "Well this is a heinous crime and
19 this person is getting the death
20 penalty," sorts of automatically. You
21 know what I mean?

22 A. No.

1 Q. Anything about the way you feel that would
2 give the death penalty a leg up in your
3 mind going into that second phase? And
4 again, I want to emphasize whether you
5 can set aside your own personal feelings
6 from what the Judge tells you the law is?

7 A. Right now, I would have to go by the law.

8 Q. I notice that you put on your questionnaire if
9 I am reading this right, your husband is
10 a self-employed contractor, correct?

11 A. Yes.

12 Q. And he had some tools stolen?

13 A. Two or three times.

14 Q. Did they ever catch the person who did that?

15 A. No.

16 Q. Is there anything about the way that was
17 investigated or not investigated by the
18 police or the fact that nobody could ever
19 be prosecuted that gives you some bad
20 feeling either about the police or the
21 legal system in general?

22 A. No. He just automatically realized that he

1 was never going to get them back.

2 Q. I think that you have some guns in your home,
3 but as I understand it you -- is it you
4 that reads the Civil War Times?

5 A. We both do.

6 Q. I used to get that, and just got busy doing
7 other things any more and I kind of miss
8 it. And if I am understanding the
9 questionnaire, the guns you have are more
10 in the nature of --

11 A. Black powder rifles and pistols. He makes his
12 own bullets. My son does have a handgun.
13 I'm not sure what it is, but they go up
14 to Vienna Rod and Gun and whatever that
15 place is up there, and target practice.

16 Q. Is this your first time on Jury service?

17 A. Yes.

18 Q. One of the things that you probably have
19 learned already in your very short career
20 in Jury service is that the way it works
21 in the real world is nothing like the
22 T.V. or the movies?

1 A. Right.

2 Q. For example, they never show in the movies you
3 sitting out in the hallway waiting for
4 two or three hours for the lawyers to ask
5 you questions, do they?

6 A. Right.

7 Q. On the hard bench. One of the things that
8 people have a misconception about the
9 legal system that I think the movies and
10 the T.V. play into is what we call
11 objections, and probably you have seen
12 some T.V. show or some movie or something
13 involving a trial where one lawyer or the
14 other stands up with blue saliva running
15 down his jaw screaming, "Objection,
16 objection, objection." I think the
17 misconception is that when the lawyer
18 does that, he's trying to hide something
19 from the Jury. It is like if the Jury
20 hears that, "My client is going to go up
21 the river for 100 years, I have to
22 object." The real truth about that, the

1 real world way that it works, is that as
2 you might expect, we have a lot of rules
3 for how to run things. Those include
4 rules of evidence and rules of procedure.
5 And the law says that if one side thinks
6 that the other side is not following
7 those procedures, that the way we bring
8 that to the Judge's attention, because
9 he's the umpire, he makes the call, is we
10 say objection. So, the point is, and it
11 doesn't matter whether it is me or
12 Mr. Ingram or whether it is Mr. Bailey or
13 Mr. Becker doing it, we have an
14 obligation under the law if we think our
15 adversary is not following the rules to
16 say "objection". You appreciate that?

17 A. Yes.

18 Q. And the reason I bring all of that up is if
19 you hear objections during the trial, and
20 you almost certainly will, can I have an
21 assurance that you won't hold that
22 against the lawyer who is making those

1 objections or against the client?

2 A. No.

3 Q. For example, if I make an objection or

4 Mr. Ingram makes an objection or maybe we
5 do it repeatedly because we don't agree
6 with what our adversaries are doing, we
7 don't want you to hold that against Miss
8 Roberts. Do you think you could do that?

9 A. Right.

10 Q. The other thing the Judge will do, and we do
11 lots of things in this business, that I
12 won't philosophize about this too much,
13 but sometimes I think we ask jurors to do
14 the unexpected. And one of them is if a
15 Judge sustains an objection, he will tell
16 you, "Now, don't speculate about what the
17 heck the answer to that question might
18 have been." That is probably a hard
19 thing to do sometimes, but do you think
20 you could do your best to follow that
21 admonition if you are given it by the
22 Judge?

1 A. Yes.

2 Q. I talked a few minutes ago about your husband
3 having some tools stolen. And I have in
4 the past also been the victim of crime,
5 so I know that sort of frustrating and
6 angering feeling. Have you given much
7 thought to the crime problem in general
8 in our country?

9 A. I know that we're -- we have a big crime rate.
10 Other than those tools, I have not been
11 privy to it, so, I can't talk with any
12 kind of knowledge about what is going on.
13 You see the crime things on television
14 all the time.

15 Q. I am actually more interested in your opinion
16 than your knowledge, and I am interested
17 in your opinion about what you think may
18 be we could do to lessen or solve the
19 crime problem, if you have any thoughts
20 about that?

21 A. I don't know how you are going to lessen it.
22 I think that there's not enough money

1 spent on law enforcement. Too much money
2 spent on paperwork and not enough on the
3 actual people that go out there and do
4 the work. I feel the same about
5 hospitals.

6 Q. These days practicing medicine is sort of
7 defensive. You are making a paper trail.

8 A. Yes.

9 Q. I'm not suggesting any of these to you, people
10 have different views about this. Some
11 people say they should give harder
12 sentences. Other people say we should
13 focus more on rehabilitation.

14 A. I think it depends on the crime. I think it
15 depends on the person who committed the
16 crime. I don't think you can make one
17 blanket statement.

18 Q. Mr. Bailey asked you about if you were
19 selected as a juror about having to look
20 at Miss Roberts, whether you might have
21 some sympathy for her. I wanted to turn
22 that around a little bit and I think

1 we're both talking about the same thing,
2 which is something I alluded to earlier,
3 that you have to be objective as you can
4 about your job in this case. Just like
5 you might feel sympathy for Donna
6 Roberts, you might also feel sympathy for
7 Mr. Fingerhut or other members of his
8 family, because you can anticipate
9 hearing testimony about how he died. You
10 can anticipate seeing photographs, and
11 some of them might be gruesome or
12 graphic. That all makes sense to you in
13 a homicide case, correct?

14 A. Yes.

15 Q. And although I made a little bit of a joke
16 earlier and said that we as lawyers would
17 like you to come in here with your mind
18 as blank as that sheet of paper back
19 there, we all know that can't be done,
20 because we're human beings and we have
21 got thoughts and experiences and
22 feelings. And my question to you is,

1 even though it is natural for anybody to
2 feel sympathy for the victim in a case
3 like this, can you once again just like
4 you would have to do as Mr. Bailey asked
5 you about Miss Roberts, can you push that
6 sympathy off to the edge of that paper
7 and say, "Well, you know what," just like
8 you have to do at work, "I feel sorry for
9 this person, but I need to push that
10 aside and objectively decide whether the
11 State has proved this case to me or not."
12 Do you think you could do that?

13 A. I think like I answered before, I would try
14 very hard.

15 Q. I have mentioned a few times that the State
16 has to prove its case. And they have to
17 prove it by proof called proof beyond a
18 reasonable doubt. Have you heard that
19 phrase before today?

20 A. Yes.

21 Q. Lots of people will stand up here and tell you
22 all kinds of things that it means. In

1 the final analysis, Judge Stuard will
2 tell you at the end of the case what it
3 really means. But we like to talk about
4 these things a little bit to make sure
5 that you are comfortable with sitting as
6 a juror on this case. Have you ever
7 heard the phrase before, "taking the
8 Fifth"?

9 A. Yes.

10 Q. And you have probably either seen that on T.V.
11 or in a movie, and again, just as the
12 objection has sometimes gotten a bad play
13 in the movies or the T.V., the Fifth
14 Amendment sort of has, because that
15 phrase taking the Fifth, means asserting
16 your right under the Fifth Amendment?

17 A. Right.

18 Q. And the Fifth Amendment says that nobody in a
19 criminal case has to do anything to
20 incriminate themselves. And what the
21 Courts have basically said over the years
22 is, what that really means is if you are

1 charged with a crime, or you are
2 suspected of a crime, you don't have to
3 do anything to help the Government make
4 its case against you. All of that has
5 washed out into or translated into what
6 we all now today call the presumption of
7 innocence. Have you heard that phrase
8 before?

9 A. Yes.

10 Q. In fact, there was a book and a movie out, I
11 think, called "Presumed Innocent".
12 Instead of twisting your minds up with
13 lots of fancy legal phrases, which don't
14 make much sense to me either, I thought
15 about this and a few years ago, I came up
16 with a way of thinking about this that
17 doesn't involve a whole lot of law. We
18 tell you during the course of all of
19 these proceedings that your decision
20 won't be made in a vacuum, that you will
21 be given guidelines for this and you will
22 be told what the elements of the offenses

1 are, and you will be told what proof
2 beyond a reasonable doubt means, but the
3 bottom line is -- and did you used to be
4 a med tech?

5 A. Yes.

6 Q. My wife is a med tech, and med tech's as
7 opposed to liberal arts majors have more
8 scientific minds, and those more
9 scientific minds are looking for
10 precision. My wife used to say when I
11 was in law school, she's going, here I'm
12 talking about two plus two equals four or
13 X squared or whatever she's talking
14 about, and I am talking about what would
15 a reasonable man do in these
16 circumstances. Now, here's why I bring
17 that up because you as a scientific
18 person may find it a little troubling
19 that when you hear all of these
20 definitions and you are told to weigh one
21 thing against another, no one is going to
22 give you any numbers or any

1 quantification. Nobody is going to say
2 if the State has got 12 witnesses, they
3 prove their case and if the State only
4 had ten witnesses, they didn't prove
5 their case, because the truth is they
6 could prove their case or not with one
7 witness if they meet all of the elements.

8 A. Right.

9 Q. So all of that having been said, because
10 there's no magical formula, I tried to
11 think about this, and I think that a
12 helpful thing for a juror to do, because
13 you don't have a formula, is to go back
14 into the Jury room and now you say,
15 "Well, I have to decide whether the State
16 proved this case beyond a reasonable
17 doubt. How the heck am I going to do
18 that?" Think of an empty box in your
19 mind's eye. Somewhere on that box is a
20 line that you the juror will draw,
21 because there's no precise formula for
22 where it is. That line is a line that

1 you are going to call reasonable doubt,
2 because the Judge is going to tell you
3 the State has to prove its case beyond a
4 reasonable doubt. Then in your mind's
5 eye, you have to take all of the evidence
6 that was given to you by the State in
7 this case, and you have to pour it into
8 the box. And you have to decide as a
9 juror, did they fill up that box, not to
10 that line, but a little bit beyond that
11 line, because it is called proof beyond a
12 reasonable doubt. Now, again, there's no
13 place on that, I can't tell you where to
14 draw that line. The only thing I can
15 suggest to you is that it is pretty high
16 up on the box, because proof beyond a
17 reasonable doubt is the highest standard
18 of proof we have in our law. When you
19 are thinking about evidence, you have to
20 pour it into the box in your mind's eye
21 and decide whether it goes beyond there.
22 Really, I think we mislead jurors a

1 little bit because we say guilty or not
2 guilty, and really what it should be in
3 my estimation anyway, and I think a
4 helpful way to think about it is proved
5 or not proved, because when you start out
6 the case -- have you heard any evidence
7 yet as we sit here today?

8 A. No.

9 Q. So that box would have to be empty, correct?

10 A. Right.

11 Q. There's nothing to pour in that box.

12 A. Right.

13 Q. And what is a little bit tricky about this is
14 that it is the State that has to give you
15 the evidence to pour into the box. So if
16 they don't put any evidence in the box,
17 it didn't get filled up beyond the line
18 called beyond a reasonable doubt, did it?

19 A. Right.

20 Q. If they gave you some evidence, but you say,

21 "You know, what if in my mind's eye when

22 I poured it in that box, it didn't get up

1 to that line, they have given me some
2 evidence, but they haven't proved their
3 case beyond a reasonable doubt in both of
4 those cases," you would have to say the
5 verdict was not guilty, right?

6 A. Right.

7 Q. And any problem doing that?

8 A. No.

9 Q. The tricky thing about this is, the Defendant,
10 because of the Fifth Amendment that says,
11 "I don't have to do anything to help the
12 Government prove its case," the Defendant
13 doesn't pour anything into the box, and
14 she doesn't take anything out of the box;
15 do you see how that works?

16 A. Yes.

17 Q. She may want to call witnesses, or she may
18 want to testify or she may want to have
19 her lawyer cross examine the State's
20 witnesses, and when that happens, that
21 may affect how you look at whether the
22 State filled up the box. Does that make

1 sense to you?

2 A. Yes.

3 Q. For example, that case I gave you a little
4 while ago where I was charged with that
5 murder, after the witness testifies when
6 the Prosecutor asked some questions, if
7 you stop right then, that box would be
8 probably filled up beyond that line, but
9 then after you heard Ben Matlock, my
10 lawyer, pull out that receipt, may be in
11 your mind's eye there's nothing in that
12 box or certainly not so much. You see
13 how that works?

14 A. Right.

15 Q. The tricky part about this is most of us want
16 to be fair, and certainly when you are a
17 juror you want to be fair, correct?

18 A. Yes.

19 Q. And when most of us want to be fair in life,
20 if I accused you of some wrongdoing, and
21 somebody else had to make a decision, you
22 would certainly want that other person to

1 at least say, "Before you decide if I did
2 what you, John Juhasz said I did, don't
3 you want to hear my side of the story?"
4 That is how it works most of the times
5 when it is a dispute at work. When it is
6 something with children, that is how we
7 do things, right?

8 A. Right.

9 Q. The problem is, once again the legal system
10 has taken reality and turned it on its
11 ear, use of the Fifth Amendment, because
12 of that presumption of innocence, because
13 the burden of proof is on the State, the
14 Defendant may not do anything in the
15 case. Do you see that?

16 A. Yes.

17 Q. Literally under the Fifth Amendment, she could
18 sit there literally or figuratively, fold
19 her arms and say, "I don't have anything
20 to say. I don't want my lawyer to ask
21 any questions of the State's witness. I
22 don't want to call any witnesses, because

1 you know why, I don't think the State
2 filled up Mr. Juhasz' box beyond the line
3 called reasonable doubt." Do you see how
4 that works?

5 A. Yes.

6 Q. Now, there's sort of a natural inclination in
7 all of us to say, "I want to hear both
8 sides. I want to hear what she's got to
9 say. She made a not guilty plea. She
10 must not think she did it. I want to
11 hear what she has to say." My question
12 is, having asked you all of these other
13 questions about my silly little boxes,
14 are you going to hold that against her if
15 she makes that decision to say, "I got
16 nothing to say"? I'm saying they didn't
17 fill up the box. Are you going to hold
18 that against her and say, "You know what,
19 she must be guilty or she would get up
20 here and talk to me." Am I making that
21 clear?

22 A. Yes, I understand what you are saying. I just

1 never thought of that aspect before. I
2 don't think.

3 Q. And again, it is one of those things where you
4 sort of have to put aside your natural
5 inclinations or your own opinions, like
6 when we talked about the death penalty,
7 and say, "Listen, even though I might
8 like to hear from her, the fact of the
9 matter is, Juhasz stood up here and did
10 all of those silly little box examples
11 for 20 minutes and the Judge didn't use
12 the box example, but he did tell me about
13 the presumption of innocence and the
14 burden of proof is on the State. Even if
15 I didn't want to hear that, I have to set
16 that aside and objectively decide." Did
17 they fill up the box?

18 A. Right.

19 Q. Do you think you could do that?

20 A. I can sure try.

21 Q. I am going to make it just slightly more
22 complicated and then we're going to leave

1 it alone. There's not just one box.
2 There are boxes for -- you heard
3 Mr. Bailey talk about elements. Well,
4 every crime has parts, or elements, and
5 each one of those little boxes has to be
6 filled up beyond that line. Because when
7 the State says, "I am charging a person
8 with a crime and it has four elements,"
9 they impliedly represent to you when they
10 come to a trial, "I'm going to prove all
11 four of those elements by proof beyond a
12 reasonable doubt," and the Judge is going
13 to tell you that you have to hold them to
14 that burden. That also applies to the
15 specification. That circumstance gets us
16 from a regular murder case to a death
17 penalty case. They have to prove that
18 specification beyond a reasonable doubt.

19 And let me try to use a -- it is a
20 little bit of a silly example, but one of
21 the specifications that has nothing to do
22 with this case, is that if you kill

1 somebody who is the Governor of this
2 State, you are eligible for the death
3 penalty. So, let's assume that we have a
4 trial and the State comes in and says,
5 "This is a death penalty case, we're
6 going to prove to you that John Juhasz
7 killed Bob Taft," and Bob Taft was the
8 Governor of the State of Ohio and John
9 Juhasz killed him. And they bring in 35
10 eyewitnesses, three video taped
11 confessions, 244 photographs, and all of
12 them prove beyond a reasonable doubt that
13 I have killed Bob Taft. However, guess
14 what? By whatever proof, when they
15 wanted to bring some certified copy of
16 the thing that says he was sworn in as
17 the Governor, when they wanted to bring
18 Thomas Moyer, the Chief Justice up to
19 say, "Yes, that dead guy is the guy I
20 swore in as the Governor," whatever
21 proof, they decide not to do it. You see
22 in a circumstance like that, they filled

1 up the box called aggravated murder
2 proving I killed Taft, but they neglected
3 to prove to you that specification. Do
4 you see that?

5 A. That he was the Governor?

6 Q. Yes. If they don't prove that beyond a
7 reasonable doubt, and remember, and
8 here's one of the reasons I use that
9 example. You have to go from evidence
10 presented in the Courtroom, you can't go
11 back in the Jury room, and I don't know
12 what these jerks were doing, but I know
13 Taft is the Governor. You can't do that,
14 because you have to decide the case from
15 the evidence in the Courtroom. Does that
16 make sense to you?

17 A. Yes.

18 Q. In that situation, you would have in essence a
19 split verdict. Would you say Juhasz is
20 clearly guilty of aggravated murder, but
21 they clearly didn't fill up the box on
22 the specification. Do you see that?

1 A. Yes.

2 Q. You think you could do that?

3 A. Yes.

4 Q. Any problems holding the State to that burden
5 of proof?

6 A. No.

7 Q. You have made important decisions in your
8 life, haven't you?

9 A. Yes.

10 Q. Everybody has. When you do it, you sort of
11 weigh the pros and the cons, don't you?
12 Whether in your mind's eye or even some
13 people do it on a piece of paper. You
14 sort of draw a line down the middle and
15 say here's the pros, here's the cons.
16 When you decide whether the State has
17 proved its case beyond a reasonable
18 doubt, you pretty much have to do the
19 same thing. You have to decide on one
20 side, there's going to be all of the
21 things that the Prosecutors are going to
22 say. Here's how we proved our case, and

1 on the other side are going to be doubts.
2 They may be doubts that you came up with
3 on your own, doubts that you came up with
4 talking to other jurors. Doubts that you
5 came up with hearing from the lawyers
6 talking to you. The State doesn't have
7 to prove its case beyond all doubt, but
8 they have to prove it beyond any doubt
9 based on reason and common sense.

10 So, just like when you make an
11 important decision in your life, you have
12 to go over to that doubt side of the
13 check list and analyze each one of those
14 and say, "Is this an imaginary doubt or
15 is this a doubt based on reason and
16 common sense?" If it is based on reason
17 and common sense, whether there's one
18 left or more than one, then you see the
19 State hasn't proved its case, correct,
20 because you have at least one doubt left
21 that is that is reasonable, that is a
22 doubt you have about whether they have

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1 proved their case?

2 | A. It has to be beyond all reasonable doubt.

3 Q. Beyond all reasonable doubt. Not beyond all
4 doubt. For example, if we got up in some
5 imaginary trial as the Defense lawyer and
6 say, "Listen folks, there's one and only
7 one doubt about the Government's case,
8 and that is that the witness they brought
9 in was transported from Mars." Well, I
10 guess that is possible, but it is really
11 not a reasonable doubt, is it?

12	A. Right.
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13 Q. But if there's one doubt left that is
14 reasonable, then the State hasn't proved
15 its case, do you see that?

16 A. Yes. It has to be beyond all reasonable
17 doubt.

18 Q. When the State is proving their elements, as I
19 talked about earlier, one of the things
20 that they are going to have to prove is
21 this case's intent. Now, the Judge will
22 probably tell you some things at the end

1 of the case, like you can't look into
2 somebody else's mind to figure out what
3 their intent was, you have to do it from
4 the evidence that is available to you.
5 That makes sense, right?

6 A. Yes.

7 Q. Do you think that the circumstances of doing
8 something might prove or fail to prove
9 intent? In other words, let's say that I
10 wanted to commit an illegal act by
11 selling Mr. Ingram there, four bags of
12 heroin for 80 bucks. It would make more
13 sense if I knew that was an illegal act
14 that I would do it in the alley behind
15 the Park Hotel than right here in front
16 of Judge Stuard, right?

17 A. True.

18 Q. Similarly, if I wanted to send Mr. Ingram a
19 bribe of a thousand dollars for doing
20 something illegal, it would make more
21 sense that I meet him in the restroom and
22 slip him an envelope full of cash, and

1 wearing rubber gloves so there's no
2 fingerprints than if I would send him a
3 letter and a check saying, "Dear Jerry,
4 here's my personal check for a thousand
5 dollars for a bribe," correct?

6 A. Right.

7 Q. I want to talk to you about one more thing and
8 then we're done. Have you ever heard the
9 phrase, "circumstantial evidence"?

10 A. Yes.

11 Q. I would like to talk about circumstantial
12 evidence. I said earlier that I like to
13 tell the story about either me or my son.
14 This one involves my son. Let's pretend
15 that it's a late Summer's day and you are
16 at my house. And it is one of those
17 storms that are blowing, the wind is
18 starting to kick up. It is starting --
19 the sun is getting occluded by the
20 clouds. I am out in the kitchen and all
21 of sudden, I hear this big crash in the
22 living room, and as I go into the living

1 room to investigate, the cat comes
2 running, darting between my legs. I go
3 in and I have kind of a big living room,
4 and there's a mantel on this side, and I
5 look, and there's my wife's Norman
6 Rockwell plate that she really liked
7 laying on the ground smashed up. I look
8 to my left and there's my son Mike going
9 like this. (Indicating) I suppose
10 circumstantially I might say that Mike
11 broke the plate, correct? I might,
12 right?

13 A. Might.

14 Q. But it could also be that the cat knocked the
15 plate off, and that is why the cat was
16 running out, not scared from the noise of
17 Mike breaking the plate, but because the
18 cat broke the plate and Mike is going,
19 "Oh man, Mom is going to kill me and the
20 cat." That makes sense, right?

21 A. Yes.

22 Q. It could also be that the breeze that that

1 little Summer storm knocked the plate
2 off, scared the cat and Mike is going,
3 "Somebody is taking the fall for this and
4 nobody is going to believe it's the
5 wind," right?

6 A. Right.

7 Q. Now here's why I tell you that story. Because
8 any one of those are plausible stories
9 from that circumstantial evidence I gave
10 you, correct?

11 A. Right.

12 Q. The reason I give you that example is,
13 thinking back what we said about
14 reasonable doubt, if you hear
15 circumstantial evidence in a case like
16 this, and it leaves you with other
17 plausible explanations, then you see that
18 that circumstantial evidence has improved
19 the case beyond a reasonable doubt. You
20 agree with that?

21 A. Yes.

22 Q. Any problem holding the State to that kind of

1 burden?

2 A. No.

3 Q. Are there any questions that have popped up in
4 your mind since I have been up here or
5 Mr. Bailey has been up here talking to
6 you?

7 A. I think you clarified everything I was having
8 a problem with.

9 Q. Any reason you can think of as we were talking
10 to you why you couldn't be a juror in
11 this case?

12 A. No.

13 MR. JUHASZ: Thank you.

14 THE COURT: Ma'am, you will be in
15 the pool from which this Jury is selected. We'll
16 choose 34 people. It will take the next couple of
17 weeks to do that. I again remind you, no talking
18 about anything or reading anything. Thank you for
19 your time.

20 (Juror No. 8 excused from the Courtroom.)

21 (SIDE BAR DISCUSSION OFF THE RECORD AND OUT OF
22 HEARING)

1 THE COURT: For the record, I had
2 counsel come up to Side Bar and ask them if they
3 had a challenge for cause. Neither side had a
4 challenge for cause, is that correct?

5 MR. BAILEY: That is correct.

6 MR. INGRAM: That is correct.

7 THE COURT: So the juror will go
8 into the pool. I don't know what your experience
9 is, maybe you have been in more efficient Courts
10 than ours in the past. But it continually comes up
11 I suspect in every trial, you have Side Bars many
12 times that are, "I have to use the restroom." It
13 is important that any Side Bar goes on the record
14 because the Court, the Appellate Attorneys always
15 make great hay out of that. So if I should forget
16 doing something, I would appreciate it, that
17 someone call it to my attention. We'll see you
18 tomorrow morning at 9:00.

19 (Court in recess at 4:30 p.m.)
20
21
22

1 Friday, April 11, 2003; Continuing Voir Dire:

2 (Juror No. 9, Richard Caraway entered the Courtroom.)

3 THE COURT: You have read the
4 handout that was given to you?

5 MR. CARAWAY: Yes.

6 THE COURT: You have a good idea of
7 why you are here?

8 MR. CARAWAY: Yes.

9 THE COURT: The main purpose of the
10 inquiry this morning is to allow these folks to
11 delve into a couple of different things. To
12 explain the type of juror that we're trying to find
13 is to say that everyone has some opinion to some
14 degree on the question of the death penalty. There
15 are those on the one side who think that it is
16 proper and just that if person takes another's life
17 illegally, that that person should thereby forfeit
18 their own life. That is not the law of Ohio.
19 There are those who feel that they could not
20 participate in any undertaking that would
21 ultimately lead to a recommendation to take
22 someone's life no matter what that person had done.

1 That is fine for both sides of people to hold those
2 opinions, but neither of them could perform what is
3 necessary of a juror in this particular matter.

4 The law of Ohio is such that every murder
5 does not merit the imposition of the death penalty.
6 It is only an aggravated murder. And there's a
7 definition, which you will get on what is
8 aggravated murder, but only on certain types of
9 aggravated murders where there are specifications.
10 Those are outlined in the statute, killing the
11 Governor, killing a police officer, and other
12 specifications. This particular case falls within
13 one of those categories where the Grand Jury saw
14 fit to attach specifications to the aggravated
15 murder.

16 Therefore, this Jury depending on how the
17 guilty phase goes, the Jury is called upon at the
18 trial to make a determination first of whether they
19 find the Defendant to be guilty or innocent. The
20 proper term is guilty or not guilty. Based on the
21 evidence that will be produced.

22 The burden is entirely upon the State to

1 prove their case by the test, which is known as
2 beyond a reasonable doubt. That is the highest
3 standard of proof in our law.

4 As you further note from reading that
5 literature that there's a presumption of innocence.
6 The Defendant need do nothing. The burden is
7 entirely upon the State to prove their case. So
8 part of the questions that will be presented to you
9 will delve into your thoughts on the question of
10 the death penalty. Now assume that a person in
11 your position has a feeling, either for or against
12 the death penalty. That is not unusual. The
13 question is whether it is so fixed that you would
14 not be able to follow the law because in order for
15 both sides here to have a fair and impartial Jury,
16 each juror must be open minded, and above all be
17 able to follow the law as it is in Ohio, whether
18 any of us might agree with it or disagree with it.
19 That is the only way that both sides can receive a
20 fair Jury here.

21 The second issue that will be inquired
22 about is concerning the pre-trial publicity this

1 case has received. Any murder case, aggravated or
2 not, always generates a certain amount of
3 publicity. Anything that happens in our community
4 that is newsworthy, you are going to read about in
5 the newspaper. This case is no different. It
6 received one might say a lot of publicity. There
7 are probably few people -- there will be some from
8 that whole group over there the other day, that had
9 not read something about this issue. If anybody
10 reads the paper daily, they would have read
11 something about the case.

12 Again, you can't have 12 people there
13 that don't know what is going on in the community.
14 It isn't very practical. But we do require each
15 juror to be open minded and not to have made their
16 mind up based on reports out of newspapers.
17 Initial reports and many times, once something has
18 been published, it is perpetuated, even though it
19 is later found to be untrue, seemed to keep getting
20 kicked around in an incorrect manner, so you will
21 be asked whether or not you are familiar with the
22 facts of this case from that contact with the

1 media. And if so, do you have fixed opinions, or
2 are you able to assure both sides here that you
3 have an open mind that you are willing to set aside
4 what you have read, and determine this case on its
5 merits. And that will be based on what you hear in
6 this Courtroom as presented by the Prosecution.
7 Fair enough?

8 MR. CARAWAY: Okay.

9 THE COURT: Mr. Bailey?

10 EXAMINATION BY MR. BECKER OF MR. CARAWAY:

11 Q. Mr. Caraway, good morning.

12 A. Good morning.

13 Q. My name is Chris Becker. I am an Assistant
14 Prosecutor and I think if you remember,
15 the questionnaire you probably saw my
16 name as well as Mr. Bailey's name on
17 there, and the names of all of the other
18 assistants. And we're representing the
19 State of Ohio, and these gentlemen are
20 representing Donna Roberts, Mr. Ingram
21 and Mr. Juhasz; and I think the Court has
22 given you a lay of the land as to what

1 we're going to discuss with you this
2 morning.

3 And I guess the first issue we're
4 going to ask you about is your opinion on
5 the death penalty and basically, what
6 we're doing is we're going to be a little
7 presumptuous today, because this case is
8 really going to be like two trials. It
9 is going to be a first part where you are
10 going to determine whether or not you and
11 your fellow jurors feel that Miss Roberts
12 is guilty or not guilty of the crimes
13 that she's charged with. And then if you
14 make that determination, we're going to
15 have a second trial, and a second part of
16 the trial, which you are going to
17 determine and recommend a sentence, and
18 that possible sentence could be the death
19 penalty. And the real question that we
20 have to ask you is, first we have to ask
21 you to be presumptuous and say that you
22 are going to find her guilty and you may

1 not find her guilty. That may be the end
2 of the trial. But what we want to ask
3 you is, and the basic question we want to
4 ask you is, if we get to that second
5 phase and the Court is going to instruct
6 you on what the law is, and there's some
7 things that he will explain to you as to
8 how you make your determination and
9 because it is a criminal trial, the State
10 has to prove all of the elements, even
11 when we get to the second phase, by proof
12 beyond a reasonable doubt. So when we
13 get to that second phase, if the law
14 allows it, if the law as the Court gives
15 it to you, and I can't give you the law,
16 that is what the Court's job is, if the
17 Court gives you the law and the facts of
18 this particular case warrant it, could
19 you go back in this Jury room and sign a
20 piece of paper with 11 other jurors that
21 basically recommends the death penalty
22 for Miss Roberts?

1 A. Yes, if necessary.

2 Q. And you also understand though as the Court
3 explained to you that there's going to be
4 a weighing, a balancing of certain
5 factors. They are called aggravating
6 circumstances and mitigating factors, and
7 the Court will explain all of that, and
8 if we get to that second phase, and you
9 get the case to determine what penalty is
10 appropriate in this case, you don't have
11 to give the death penalty.

12 So, I guess the second and follow up
13 question that I have would be to you is,
14 if the facts don't warrant it, even
15 though you may find in the first part
16 that she played some role in the death of
17 another individual, you could recommend a
18 sentence less than death?

19 A. Yes.

20 Q. You understand that?

21 A. Yes.

22 Q. You are going to have basically four choices,

1 if we get to that second phase. And
2 again we're being presumptuous, if you
3 get to that phase where you find her
4 guilty and then we come back for this
5 penalty phase of the trial, you will be
6 given a list of options as to what you
7 can do, from 25 years to life or life
8 imprisonment with no parole eligibility
9 for 25 years; or of course, the worst
10 penalty and the ultimate penalty which
11 would be death. You would have a range
12 to choose from and you would listen
13 fairly to the Court's instructions, and
14 any evidence that her and her attorneys
15 may put on, as well as any evidence we
16 may have and follow the Court's
17 instructions and weigh that?

18 A. Yes.

19 Q. So, you are not so convinced that if you find
20 her guilty of a role in some type of
21 murder, that you would automatically have
22 to go back there and sign a verdict form

1 calling for the death penalty?

2 A. No.

3 Q. You would listen to the evidence and make a
4 determination based upon the evidence as
5 to whether or not this particular
6 Defendant deserved to have that penalty
7 imposed upon her?

8 A. Yes.

9 Q. Now, I also noticed in your questionnaire that
10 we have and one of the reasons we gave
11 you these questionnaires is because
12 otherwise we would be asking a lot of
13 these questions. There's certain things
14 Attorneys pick up on and we see that we
15 feel are important, and we circle them or
16 highlight them or put red checks by them.
17 And I notice that you apparently know a
18 lot of deputies here in Trumbull County,
19 is that correct?

20 A. Yes.

21 Q. What deputies do you know?

22 A. I know a lot of them buy their first names.

1 Q. Do you know Pete Pizzulo?

2 A. Yes.

3 Q. Do you know Tony Leshnack?

4 A. There's somebody named Tony, I don't know if
5 that is the person or not.

6 Q. Usually he hangs around with Pete. Do you
7 know Captain Bacon here?

8 A. Yes.

9 Q. Now, I assume you haven't spoke to them about
10 this case, have you?

11 A. No.

12 Q. Because in your questionnaire, you indicated
13 that I think you are a daily reader of
14 the Tribune Chronicle?

15 A. Right.

16 Q. I am assuming as a daily reader, you have
17 heard about this case?

18 A. Yes.

19 Q. And the second sort of issue or hurdle we have
20 to get over here is despite what you may
21 have read, I assume you maybe have seen
22 some things on television, is that

1 correct?

2 A. Yes.

3 Q. And I don't know if you listen to the radio or
4 if it has been discussed on radio?

5 A. Yes.

6 Q. It has been in the media quite a bit?

7 A. Yes.

8 Q. The second issue and the second hurdle we're
9 going to have to clear with you is
10 despite what you have heard or read or
11 seen on television, can you set that
12 aside and not let that influence your
13 decision as to whether or not she's
14 guilty or innocent? And also your
15 decision whether or not she should get,
16 if we get to that second phase, the death
17 penalty or some lesser penalty?

18 A. Yes.

19 Q. You don't feel that that publicity and the
20 things that you have read have influenced
21 your decision that you are going to come
22 in here and automatically say, "Well, I

1 read in the Tribune, this, that and
2 another," or "I saw on the news, I don't
3 care what Mr. Juhasz and Mr. Ingram say,
4 I'm going to find her guilty"?

5 A. No.

6 Q. You wouldn't do that?

7 A. No.

8 Q. You would be fair and open minded and be able
9 to set aside whatever it is you heard,
10 read or saw on television about this
11 case?

12 A. Yes.

13 Q. Now, Mr. Caraway, we were talking a little bit
14 about you knowing some of these deputies.
15 And you speak to them or do you deal with
16 them in your work? How is it that you
17 know so many?

18 A. Well, the reason I know them, that several
19 years ago, when G.B. Brown's Restaurant
20 in Champion, at the time it was open
21 there were some of them would come in for
22 lunch every now and then, it wouldn't be

1 every day. It would be a different
2 person and I would be there every day
3 myself and so I like to talk to people,
4 so I would talk to the people that are
5 around me. Sometimes they would be
6 around me and I would be talking with
7 them.

8 Q. And you also know -- do you know the Howland
9 police officers?

10 A. I have heard their names. I don't believe I
11 have met any of them.

12 Q. You are not very friendly with them or
13 shouldn't say friendly, but you are not
14 acquainted with them?

15 A. No.

16 Q. The fact that you know some of the deputies
17 and maybe them, they may even take the
18 witness stand, Pete Pizzulo and Tony
19 Leshnack, maybe in particular. If you
20 were seated here as a juror in this case,
21 would you give their testimony any more
22 credibility than any other witnesses?

1 A. I tried to treat everybody fairly.

2 Q. You would follow the Court's instruction, and
3 you wouldn't let the fact that you had
4 seen them around and maybe saw them at a
5 restaurant some day and spoken to them,
6 you wouldn't let that influence your
7 decision?

8 A. No.

9 Q. So, if it comes down to a decision of, you
10 know, "I believe the State has proven
11 their case, but, not quite to beyond a
12 reasonable doubt, but you know, I know
13 Tony Leshnack and he testified and he's a
14 good guy and he wouldn't lie about
15 anything, so therefore, because I know
16 Tony, I'm going to vote to find her
17 guilty."

18 A. I would try to do it fairly.

19 Q. Even if the case boiled down to something, and
20 you felt that the State either hasn't
21 proven its case, or the death penalty
22 wasn't warranted, you wouldn't let the

1 fact that you know some of these deputies
2 influence your decision?

3 A. No.

4 Q. Because you may be at that restaurant or you
5 may be somewhere and you may be on that
6 Jury and you may be on a Jury that they
7 don't find her guilty or they don't give
8 her the death penalty, and if they see
9 you somewhere and they say, "Mr. Caraway,
10 what were you thinking, how could you not
11 have done that?" You won't let that
12 impact your decision?

13 A. No.

14 Q. You are sort of your own man?

15 A. Right.

16 Q. Now, this case involves a homicide obviously.
17 And the accusation that's you are going
18 to find if you serve on this Jury are not
19 that Donna Roberts shot anybody. She
20 never pulled the trigger and pointed it
21 at anyone, but she's charged as a
22 complicitor, an aider and abetter; do you

1 understand that?

2 A. Yes.

3 Q. And you don't have a problem, you wouldn't
4 treat her any differently, you would
5 follow the Court's instruction as to what
6 an aider and abetter is, correct?

7 A. Right.

8 Q. You would follow the Court's instructions as
9 to the type of punishment that she were
10 to receive if she were convicted of an
11 aider and abetter and you got to that
12 second phase?

13 A. Yes.

14 Q. Now one of the things that we talk about all
15 of the time in criminal cases is this
16 idea of what reasonable doubt is. And
17 I'm sure you are very familiar with that
18 term. You have probably read it in some
19 of the stories you read in the newspaper.
20 I don't know what television shows you
21 watch, but I'm sure you have seen that on
22 television or radio programs or books you

1 may have read, correct?

2 A. Yes.

3 Q. You understand that for the purposes of this
4 hearing, the only definition, the only
5 term of reasonable doubt is going to be
6 what Judge Stuard tells you reasonable
7 doubt is; correct?

8 A. Yes.

9 Q. And you will be able to follow that
10 instruction as to what reasonable doubt
11 is?

12 A. Yes.

13 Q. Now, there's a lot of different ways of trying
14 to approach this question. But, because
15 everybody is going to have a different
16 idea of what reasonable doubt is, and
17 sometimes people can quantify that, they
18 can say, well, if it is 90 or 95 percent.
19 Some people might say 98 percent. Some
20 might say 99 percent, but everybody has
21 got a different area where they think
22 that would be. And some people refer to

1 it as say like a swimming pool or glass
2 of water, how full it is, that is when
3 you get to reasonable doubt. You
4 understand though, and the Court is going
5 to tell you, everything in your life has
6 doubt, correct?

7 A. I would imagine so.

8 Q. And we're only talking about beyond a
9 reasonable doubt here, not all doubt, not
10 possible doubt, not imaginary doubt, just
11 reasonable doubt. And the State has to
12 prove it beyond a reasonable doubt. And
13 you also understand that Miss Roberts has
14 a Constitutional right not to do anything
15 in this case. Do you understand that
16 concept?

17 A. Yes.

18 Q. We often refer to that as her Fifth Amendment
19 right. I'm not sure if you are familiar
20 with that?

21 A. Yes.

22 Q. And we could be here, Mr. Bailey and I, we

1 could stay in this Courtroom until the
2 end of July, present 85 witnesses, 370
3 Exhibits, take you out to the scene, show
4 you video tapes, show you movies; we
5 still may not be able to prove to you
6 reasonable doubt, right?

7 A. Right.

8 Q. Proof beyond a reasonable doubt?

9 A. Yes.

10 Q. And we may go through two months of presenting
11 evidence and testimony, and her and her
12 attorneys may say -- stand up and say,
13 "Your Honor, we don't have anything to
14 present to you." You could still find
15 her not guilty if the State hasn't met
16 its burden of proof to all of the
17 elements of the crimes, right?

18 A. Yes, I try to be fair about it.

19 Q. And you understand that in our system of
20 justice, it's the State's burden to prove
21 her guilt beyond a reasonable doubt?

22 A. Yes.

1 Q. And you wholly subscribe to that?

2 A. Yes.

3 Q. And the fact that she sits here today with two
4 attorneys and sits in this Courtroom
5 accused by a piece of paper called an
6 Indictment, you don't think she's guilty
7 of anything, do you?

8 A. I don't know what to think right now. I
9 haven't heard the evidence.

10 Q. So, if the Court told me, "Mr. Becker, go sit
11 down. I'm going to send Mr. Caraway back
12 there with 11 other people and they are
13 going to determine whether she's guilty
14 or innocent." What would your verdict
15 have to be?

16 A. Wait and see what the evidence is.

17 Q. If you hadn't heard one bit of evidence and
18 the Court told you right now to go to
19 that Jury room, your automatic vote is
20 going to be what, not guilty?

21 A. It would have to be, because they are assumed
22 innocent until proven guilty.

1 Q. You understand that concept very well?

2 A. Right.

3 Q. You understand that the Indictment is just
4 basically an accusation, someone is
5 pointing a finger at someone. It is a
6 little bit like at my house sometimes. I
7 have four kids and they range in age from
8 eight to one year old, and I got them all
9 over, boys and girls, and sometimes
10 something happens, somebody will come up
11 and they are holding their head and they
12 will be crying and the other one will be
13 saying, "I didn't do it," and the third
14 one will be saying, "Yes, they did. They
15 pushed him down." It is just a bunch of
16 accusations, right?

17 A. Right.

18 Q. Now sometimes this happens where one of them
19 will have a plastic bat or a yard stick
20 or they will have some other device and
21 I'll see them swinging it around and the
22 other one walking away holding their head

1 and crying. I may not have seen them hit
2 my other child, but I can fairly surmise
3 that the kid who is swinging the stick or
4 the plastic bat or whatever it is they
5 are swinging, probably hit the other one
6 in the head, right?

7 A. It would be a good possibility.

8 Q. That is an inference, I am making an
9 inference?

10 A. Right.

11 Q. I didn't see it, but from the circumstances, I
12 can infer that one of my children hit the
13 other one, maybe not on purpose, but they
14 have done it in their play and struck the
15 other child?

16 A. Yes.

17 Q. That is called circumstantial evidence. And
18 the Court is going to tell you that
19 circumstantial evidence is just, it is
20 just as important as direct evidence.
21 One of the examples that I always use is,
22 and I think you watch channel 27 news?

1 A. Yes.

2 Q. I forget who the weather man is.

3 A. There's several of them.

4 Q. Who is the one that -- is that Dr. Dave?

5 A. There's Don that is on there.

6 Q. I assume this has happened to you and I hope I
7 know it is April, but I'm not going to
8 use the snow, if you went home tonight
9 and they said, and you watched the
10 weather on channel 27 and they said, and
11 it seems to be a pretty sunny day out
12 today. Looks pretty warm out. But if
13 they told you on the weather, "Listen,
14 we're getting a cold front in tonight,
15 there's going to be some rain. It is
16 probably going to be heavy at times.
17 Maybe get some lightning and thunder."
18 And it is 11:00 and you look out your
19 window, it is still clear. You see the
20 stars and you look out on your driveway
21 and you don't see anything there. You
22 say, "I'm going to go to bed," and you

1 wake up the next morning, your driveway
2 is wet, your car is wet, your neighbor's
3 driveway, the street has got water
4 running down the gutter; you never saw
5 the rain, right?

6 A. Right.

7 Q. But you can infer that it rained last night?

8 A. Right.

9 Q. You will be able to make those kind of
10 conclusions?

11 A. Yes.

12 Q. Now this happens to me sometimes though.

13 Sometimes in the Summer, my wife and I
14 will turn the sprinkler on or the kids
15 will be running through it and we may
16 leave the water on. This usually happens
17 once a Summer and you get up, and
18 everybody's yard is dry and everybody's
19 driveway is dry, except for mine. I can
20 infer that we probably left the sprinkler
21 on if I look out the window and I see the
22 sprinkler going and it didn't rain,

1 right?

2 A. Right.

3 Q. You will be able to make those kind of
4 inferences?

5 A. Yes.

6 Q. If they are proven to you again by proof
7 beyond a reasonable doubt?

8 A. Right.

9 Q. Now like I mentioned in this case, Miss
10 Roberts is charged with a number of
11 counts. It is actually four different
12 counts. Two of those counts are what we
13 call aggravated murder. They have
14 specifications, which are called the
15 aggravating circumstances, and those are
16 the kinds of things that if we get to
17 that second phase, you will have to
18 weigh. Some of the aggravating
19 circumstances -- and there also happen to
20 be two other crimes in this case, are
21 what we call aggravated burglary and
22 aggravated robbery. And I assume that

1 when I say the terms burglary and robbery
2 you get an idea in your head as to what
3 those crimes may be, correct?

4 A. Yes.

5 Q. And again, the Court though will instruct you
6 as to what the definition of those crimes
7 are, correct?

8 A. Yes.

9 Q. You will follow the Court's instructions?

10 A. Yes.

11 Q. One of the things we always worry about
12 sometimes is, and this may go more to the
13 death penalty portion, but you wouldn't
14 try and change the law, if you didn't
15 agree with it, would you?

16 A. No.

17 Q. And if the Court gives you what the law is,
18 you are not so set that you would say, "I
19 don't think that should be the law," or
20 "They should have to prove something
21 else, so I'm not going to find her
22 guilty, even though the State met its

1 burden of proof in all of the elements of
2 the crime and even though they proved
3 them beyond a reasonable doubt. I think
4 there should be something more that they
5 have to prove." You wouldn't do that to
6 the State, would you?

7 A. No.

8 Q. Now, as I mentioned to you, this case involves
9 complicity to murder. It is a
10 complicity, it is an aider and abetter.
11 Well, strike that. This case involves an
12 accomplice to the murder and you are
13 going to hear some things about the
14 person who actually pulled the trigger.
15 You are probably going to see some
16 photographs of a deceased individual, the
17 individual who is the victim in this
18 case. Is that something that you feel
19 you could do, and it wouldn't affect you?

20 A. I would be all right.

21 Q. Some of these photographs may be unpleasant.
22 You wouldn't look at the photographs and

1 say, "My gosh, look at this poor human
2 being. If she had anything to do with
3 it, I don't care if she talked to
4 somebody that knew something about it,
5 she should be convicted." You wouldn't
6 do that, would you?

7 A. No.

8 Q. You would be fair and even if it was a heinous
9 crime and if the crime looked bad to you,
10 or the crime scene or the victim looked
11 as if he may have suffered, you wouldn't
12 say, "Well, you know what, I know the
13 State didn't prove all of the elements by
14 proof beyond a reasonable doubt, but it
15 is such a terrible crime, I can't let her
16 walk out of here." You wouldn't do that,
17 either?

18 A. No.

19 Q. Now this case does involve the use of a gun.
20 And I didn't really see in your
21 questionnaire any feelings you may have
22 one way or another. Do you actually own

1 any guns?

2 A. No, I don't.

3 Q. Have you ever used a firearm?

4 A. No, I haven't.

5 Q. I also notice that you work, is it in
6 maintenance at the K-Mart Distribution
7 Center?

8 A. Yes, it is.

9 Q. You are still working there?

10 | A. Yes.

11 Q. And I know they are having some problems out
12 there and some things out there. Is
13 there anything either related to your
14 job, because I think there have been some
15 layoffs out there, I believe?

16 A. There have been.

17 Q. Is there anything in your personal life that
18 you feel would interfere with your
19 ability to serve as a juror in this case?

20 | A. No.

21 Q. You don't have anything weighing on your mind,
22 such as I might lose my job or K-Mart is

1 in trouble or a sick relative or spouse
2 or child or anything that may detract you
3 from being able to sit as a fair and
4 impartial juror in this case?

5 A. No.

6 Q. You understand that because of the seriousness
7 of these charges and the procedure and
8 the time, it may take a while to present
9 everything to you.

10 A. Yes.

11 Q. And you would be comfortable being away from
12 your job and your family and your friends
13 for a month of time, because the Court is
14 going to tell you, you can't talk about
15 this to anybody. If you see those
16 deputies come in the restaurants, you
17 say, "Hey, I am sitting on this Donna
18 Roberts' trial. I want to know this,
19 that and the other thing." You are going
20 to take an oath and follow the Court's
21 instruction and not speak to anybody
22 about this case?

1 A. Right.

2 Q. You won't have a problem in doing that?

3 A. No.

4 Q. I noticed at one point, I think it was on your
5 questionnaire, that you had actually done
6 some things for a probation department?

7 A. Yes.

8 Q. And I understand it was a while ago. And I
9 think you basically dealt with people
10 that had been convicted of crimes, it was
11 like a diversionary program. Instead of
12 going to jail, you did something with
13 them?

14 A. Yes.

15 Q. What exactly did you do for these people?

16 A. Well, what I did was, there's a Judge that
17 decided that there were some people that
18 were first time offenders,
19 misdemeanors -- and he felt that some of
20 the people could deserve a second chance.
21 There were other people that may have had
22 the same type of crime that were supposed

1 to have committed and he figured they
2 didn't, but how he decided one or the
3 other, it is not up to me to decide, but
4 he decided there were some of them that
5 deserved a chance, that they would be
6 better off by not going to jail, by going
7 through a diversary program, so I helped
8 them out.

9 Q. What exactly did you do? Did you have them
10 call you every day or did you help them
11 look for jobs? What is it that you did
12 specifically?

13 A. What I did, what my particular case, I was
14 with a person that had several problems
15 really. One was that he was an
16 alcoholic. He had parents that were
17 alcoholics. He was, I suppose, like
18 mentally diminished or however the legal
19 word is for it there. He had a low I.Q.
20 and he was operating at about a second
21 grade level for reading and whatever it
22 would be, so the rest of his life was

1 going to be that way and he had some
2 other problems, like shoplifting was what
3 his main problem was, what he was
4 actually arrested for. I guess from what
5 he was saying, that his, I guess his Dad
6 took him into a store somewhere and
7 encouraged him to shoplift and so this
8 was his background, and so, finally he
9 did. I guess this had been going on
10 throughout his life. It wasn't just a
11 one time thing, and so I was helping him
12 to find a way around this, because he
13 didn't have a job, and so I figured that
14 one thing I wanted to do was show him
15 what kinds of jobs were available for
16 him, based on second grade education.
17 Even though he was an adult, he was at a
18 second grade level of education. There
19 are a lot of jobs that he would be able
20 to do and he didn't think about those. I
21 would go through a newspaper and show him
22 what section of the newspaper the jobs

1 are located and I would show him the
2 types of jobs that he could probably do.
3 I would say, "Most of these jobs you
4 won't be able to do," and I would tell
5 him why. He knew the type of jobs he
6 could do. I told him that he should
7 apply for this, this or this, these types
8 of jobs, I would see in the newspaper.
9 If he had another one he was interested
10 in, he could ask me about that and I
11 could say, "If you think you could do
12 that," he would apply for it, also. I
13 would work with him that way and also
14 since he didn't have a car, he wasn't
15 able to drive, he took a bus everywhere,
16 so I showed him where the bus stops were,
17 how to get on a bus, what you do, to pay
18 some money.

19 Q. You were sort of like a tutor for this
20 individual?

21 A. Right.

22 Q. It was just the one individual, the one time?

1 A. Well, this, I was a volunteer in that
2 particular case, where I was with
3 Citizens Probation Authority was the name
4 of the place I was with there. So they
5 had the number of cases, and their
6 caseworker were being swamped with cases
7 and cases, like what they considered to
8 be of a more serious nature, not that he
9 wasn't serious, but there were people
10 that could be convicted of maybe felonies
11 or something, and they could help them
12 more than this person. They were all
13 important, but they had to prioritize it.
14 So a Judge come up with this idea of
15 helping people that were first time
16 offenders that were the cases that were
17 not serious when compared to a felony.

18 Q. And you helped out and you volunteered?

19 A. Yes.

20 Q. Did you enjoy that experience?

21 A. Yes, I did.

22 Q. And you understand we're dealing with a little

1 bit more and the only reason I ask is
2 that this is a much more serious offense
3 and you understand that?

4 A. Yes.

5 Q. You indicate, I think on your questionnaire
6 that you could serve or you could not
7 serve, you kind of take it or leave it.
8 You don't really care?

9 A. I could do whatever, that is the purpose of
10 being here is to decide whether people
11 are going to be qualified or not
12 qualified for whatever reason.

13 Q. You have been through this process you
14 mentioned, somewhere in Michigan?

15 A. Yes.

16 Q. I understand you didn't get to actually render
17 a decision, but you actually served until
18 a mistrial was declared?

19 A. Yes.

20 Q. Is there anything you gained out of that
21 experience that you feel whether it was
22 positive or negative that would say, "I

prefer not to," or "I would really like to again and actually get to make the ultimate decision," or you just sit here and do your job and if this case ended up somewhere along the lines not getting to you for whatever reason, you would be more than happy to serve?

A. Yes. I think this is an interesting type of thing to do.

MR. BECKER: Thank you very much

Mr. Caraway.

EXAMINATION BY MR. INGRAM OF MR. CARAWAY:

Q. I got bad news for you, your deal is only
halfway over. When I am done, you can
then leave. How are you doing over there
this morning?

A. Doing good.

Q. Do you want a glass of water or anything?

A. No thanks.

Q. My name is Jerry Ingram, and John Juhasz and I share the responsibility of representing Donna Roberts who is on trial for her

1 life. Obviously we feel, we take our
2 responsibilities very seriously and feel
3 we should take every reasonable
4 precaution in selecting a fair minded
5 Jury, the same type of Jury that you or I
6 would want to hear our case if we were on
7 trial. That sound fair enough to you?

8 A. Yes.

9 Q. This is the only time that we can talk
10 directly to one another. After the trial
11 starts, the lawyers can talk at you, but
12 they can't talk to you. And right now, I
13 am allowed to talk to you, but more
14 importantly, you are allowed to talk to
15 me. I would very much like to have a
16 conversation with you, where you and I
17 talk about some things, but you know I'm
18 trained to be a lawyer, and it is a
19 professional hazard that we monopolize
20 the conversations, so whenever there's
21 something you would like to say or any
22 question you would like to ask me, would

1 you please do so?

2 A. Okay.

3 Q. This process is a lot like a job interview.

4 Except for job interviews, you determine
5 which jobs you are going to go be
6 interviewed for, and here, the Jury wheel
7 sort of selected you to come be
8 interviewed?

9 A. Yes.

10 Q. And we're selecting you, we're interviewing
11 you today for one of the most important
12 jobs there is. The job of finding the
13 truth and determining the fate of another
14 human being. Would you agree with me
15 that that is a big responsibility?

16 A. Yes.

17 Q. Some people have already told us that it is
18 too big of a responsibility for them and
19 we can understand that. My first
20 question to you is, how do you feel about
21 being asked to assume that
22 responsibility?

1 A. Well, as I mentioned with the other person who
2 has already spoken, I have done this once
3 before and I am interested in this type
4 thing.

5 Q. So you think you are up to the responsibility?

6 A. Yes.

7 Q. That Jury experience that you had in Michigan,
8 I understand that there was a mistrial
9 because the main witnesses all claimed
10 that they didn't know anything?

11 A. Right.

12 Q. So the trial actually began, the Jury was in
13 the box, and you were hearing evidence at
14 the time the case was declared a
15 mistrial, am I correct?

16 A. Yes.

17 Q. Did that experience leave a sour taste in your
18 mouth? How did you feel about that?

19 A. No. The only thing I wondered about was what
20 happened to the main witnesses, because
21 evidently, the case being brought to
22 trial, these people, at least the lawyers

1 thought there was a case, or they
2 wouldn't have brought these people in. I
3 wondered what happened there, naturally,
4 because the lawyer was saying, "Well,
5 this is based on my whole case." He
6 didn't use those exact words. That is
7 what he was saying. The other thing was
8 supporting the evidence and all of a
9 sudden these people say, "I don't know a
10 thing." He told me in his office whether
11 his lawyer's office or wherever he talked
12 with him there, he said he told him an
13 entire story, summarized the best he
14 could without going into detail, what the
15 story was. And all of a sudden these
16 people are now saying they don't remember
17 a thing. They told me this earlier
18 before the trial and now they are on the
19 stand and say they don't remember a
20 thing.

21 Q. So you talked to the Prosecutor after the case
22 was mistried?

1 A. No, I didn't.

2 Q. This case involves an allegation, the State's
3 allegation that Donna Roberts plotted or
4 conspired with a male companion, Nate
5 Jackson, to cause the death of Robert
6 Fingerhut. Donna and Robert were
7 divorced, but continued to work together
8 at the Greyhound bus station in Warren
9 and Youngstown, and to live together in
10 Howland. This trial is about the guilt
11 or innocence of one person and one person
12 only, Donna Roberts. Do you understand
13 that?

14 A. Yes.

15 Q. Throughout the course of these proceedings,
16 you will hear the name Nate Jackson, and
17 it won't take long for you to conclude
18 that Mr. Jackson did what the State says
19 he did. The issue here is did Donna help
20 him? You understand that?

21 A. Yes.

22 Q. And when Mr. Becker was up here, he told you

1 this case involved complicity. Do you
2 recall that?

3 A. Yes.

4 Q. This case involves an allegation of
5 complicity?

6 A. Yes.

7 Q. You understand that?

8 A. Yes.

9 Q. The State says that Donna aided and abetted
10 Nate Jackson. Now they have got to prove
11 it. Does that make sense to you?

12 A. Yes.

13 Q. That is what our entire system of justice is
14 about. The State makes an allegation,
15 you go to Court, the State is required to
16 prove that allegation by proof beyond a
17 reasonable doubt. Do you have any
18 problem with that concept whatsoever?

19 A. No.

20 Q. In support of its allegation that Donna
21 participated in the death of Robert
22 Fingerhut, the State will present various

1 letters and recorded conversations
2 between Donna and Nate. Now, some of
3 these letters and conversations are
4 sexually explicit. And to be candid with
5 you, they may be rather offensive.
6 However, the allegation is murder, not
7 loose morality. Do you understand that?

8 A. Yes.

9 Q. No matter how shocked or offended you may be
10 by the sexual nature of this evidence,
11 your job responsibility as a trial juror
12 will be to test that evidence, to
13 determine whether it ties Donna to the
14 death of Robert Fingerhut. Do you
15 understand that?

16 A. Yes.

17 Q. And will you do that, Sir?

18 A. Yes.

19 Q. Donna denies that she participated by
20 conspiracy, plot or otherwise in the
21 murder of Robert Fingerhut. Do you feel
22 you might have any kind of a problem

1 giving a scarlet woman a fair shake
2 during a trial?

3 A. No.

4 Q. Would you have the courage to acquit, if you
5 felt a not guilty verdict was supported
6 by the evidence?

7 A. Yes.

8 Q. Now you have read in the Warren Tribune, some
9 articles about this case, am I correct?

10 A. Yes.

11 Q. Can you summarize for me what you read?

12 A. Basically, from what I remember, they
13 mentioned that Nate Jackson and the
14 Defendant were, as I remember, were going
15 to where her husband was living. And
16 basically, the husband I guess, some kind
17 of argument or something was supposed to
18 have gone on and somehow the husband
19 ended up being dead. That's basically
20 what I remember. Other than that, the
21 newspaper went into more detail, but I
22 forgot what else was actually in there.

1 Q. You, in your questionnaire answered that you
2 believe what you read in the newspaper?

3 A. Yes.

4 Q. What you read about Donna, has that led you to
5 form any impressions about whether or not
6 she was involved in this?

7 A. No.

8 Q. Have you seen any T.V. coverage about this
9 case or about Nate Jackson?

10 A. There has been some, yes, not since we started
11 with the trial here, but in the past,
12 there has been some.

13 Q. And do you recall what you may have seen on
14 T.V.? Did that differ from what you just
15 told me about?

16 A. Basically, it was pretty much the same. They
17 didn't go into all of the details I
18 remember on the T.V. programs, the news
19 programs, but they mentioned something
20 about it. Sort of headline type of
21 thing.

22 Q. I understand from listening to your answer,

1 that you are here because you believe you
2 can be a fair juror?

3 A. Yes.

4 Q. Being a fair juror in this case, would require
5 that you set aside, erase from your
6 memory banks, so to speak, any
7 impressions that you may have formed
8 about this case as a result of what you
9 have seen or heard about it; does that
10 make sense to you first off?

11 A. Yes.

12 Q. And some impressions are easier to set aside
13 than others, would you agree with that?

14 A. Yes.

15 Q. Do you think that you can set aside, erase
16 from your memory bank, anything you have
17 seen, read or heard about this case, and
18 judge the guilt or innocence of Donna
19 Roberts solely on what you see here, what
20 you hear here?

21 A. Yes.

22 Q. Because that is what your oath as a juror will

1 require you to do, and will you do your
2 best to do that?

3 A. Yes.

4 Q. Because this is a capital case, we're required
5 to learn your feelings about capital
6 punishment and life imprisonment as
7 potential sentencing options. As you
8 have been told, this is potentially --
9 only potentially a two phase process.

10 A. Yes.

11 Q. The issue in the first phase is whether Donna
12 did it or not.

13 A. Right.

14 Q. And if the Jury finds she did not do it, what
15 would happen, we would all pack up our
16 bags and go home.

17 A. Yes.

18 Q. We would never get to the second phase. So
19 you understand you may never have to
20 consider the question of punishment?

21 A. Right.

22 Q. And as odd as it sounds and I guess only

1 lawyers can do this, we're asking you
2 hard questions about difficult issues you
3 may never have to consider.

4 A. Yes.

5 Q. I don't want you to think by standing up here
6 talking to you about sentencing
7 alternatives that we're predicting that
8 we're going to get to a second phase and
9 that you will have to decide on
10 punishment. Nothing could be farther
11 from the truth. We're lawyers, not
12 fortune tellers, we don't predict the
13 future. Do you understand that?

14 A. Yes.

15 Q. Odds are in the morning when you get in your
16 car or when you are going to K-Mart, you
17 get in your car, you buckle up your seat
18 belt?

19 A. Yes.

20 Q. And you are doing that, just in case you get
21 in an accident, correct?

22 A. Well, actually for a number of reasons. That

1 is one of the reasons, though, yes.

2 Q. We don't think we're ever going to get to a
3 second phase, but we have to ask you
4 these questions now, because the law
5 requires; do you understand that?

6 A. Yes.

7 Q. And that concerns me a little bit. It is
8 like -- it seems to me a lot like putting
9 the cart before the horse. We're talking
10 about punishment, when I think we should
11 be talking about guilt or innocence. Do
12 you understand my concern?

13 A. Yes.

14 Q. Let me ask you straight up. Do these
15 questions about possible punishment make
16 you think that Donna was probably
17 involved or we wouldn't be asking you
18 these questions?

19 A. No.

20 Q. And the Prosecutor has asked you if you would
21 fairly consider the death penalty if we
22 ever got to the second phase, to a second

1 phase. The flip side of that is whether
2 you would fairly consider the life
3 sentencing options.

4 A. Yes.

5 Q. And in general, philosophically, pretend you
6 are back in one of those high school
7 classrooms and you are asked, "How do you
8 feel about life imprisonment as an
9 alternative to the death penalty?"

10 A. In some cases that is a good alternative.

11 Q. And in some cases the death penalty would be a
12 good alternative?

13 A. Possibly, depending on the evidence.

14 Q. Have you ever engaged anyone in debate about
15 the death penalty or discussed it with a
16 friend, family member?

17 A. Well, in the past, there have been times where
18 people say, what do you think about this,
19 that or the other, and there wasn't any
20 prolonged debate. Just something once in
21 a while.

22 Q. And in any of those conversations, did anybody

1 every raise to you the cost factor of
2 housing someone in prison?

3 A. I have heard numbers about how much it is
4 supposed to cost for that.

5 Q. Do you have any opinion about this cost issue
6 at all?

7 A. No.

8 Q. In the life sentencing options, you understand
9 that life without parole is indeed life
10 without parole?

11 A. Right.

12 Q. It means you go, you don't get out?

13 A. Right.

14 Q. And the other two life options with parole
15 only after 25 full years, with parole
16 only after 30 full years, means whoever
17 gets that sentence does day for day 25
18 years, or day for day 30 years, before
19 that person would be eligible for parole.

20 A. Right.

21 Q. Have you ever considered a political
22 candidate's views on capital punishment

1 in determining whether or not to vote for
2 that candidate?

3 A. No, not really. It's not one of the main
4 issues I think about.

5 Q. We have had some renewed debate in this
6 country recently. The State of Illinois
7 put a moratorium on executions. And then
8 the Supreme Court recently issued a
9 decision upon whether or not, and I'm not
10 sure I got the words right myself,
11 mentally challenged people could be
12 executed. Have you been exposed to any
13 of these debates?

14 A. I heard something about it. I don't know all
15 of the details, but I have heard
16 something about it.

17 Q. Have you ever seen the movie "True Crimes"
18 starring Clint Eastwood?

19 A. No, I didn't.

20 Q. If we ever get to this second phase, the Judge
21 will tell you that the Jury will have to
22 weigh, and that is balance, aggravating

1 circumstances, bad facts, against
2 mitigating factors, positive things, that
3 could be said about a Defendant, because
4 this is a make up second phase, I am
5 talking about. It is the responsibility
6 of the State of Ohio, at a second phase
7 proceeding, to prove to the Jury that the
8 aggravating circumstances outweigh the
9 mitigating factors by proof beyond the
10 existence of a reasonable doubt and to
11 prove beyond a reasonable doubt the
12 death -- that death is the appropriate
13 punishment. Do you understand that?

14 A. Yes.

15 Q. Will you hold the State to that burden?

16 A. Yes, whatever legal part is, yes.

17 Q. As a juror, you are the sole judge along with
18 your other jurors, you are the sole judge
19 of the weight of the evidence.

20 A. Right.

21 Q. So, when you are weighing these aggravating
22 circumstances against these mitigating

1 factors, that is a personal
2 responsibility that you must assume.

3 A. Right.

4 Q. And you must make a personal judgment.

5 A. Yes.

6 Q. Will you do that?

7 A. Yes.

8 Q. So basically, when it comes to weighing
9 evidence, whether you are weighing
10 evidence at the first phase of the trial
11 or whether you are weighing evidence at
12 the second phase of the trial, the bucks
13 stops with you?

14 A. Yes.

15 Q. The Judge doesn't do it, we don't do it. That
16 is the most important responsibility in
17 this Courtroom, and that is what we're
18 interviewing you for. You understand
19 that?

20 A. Yes.

21 Q. By the way, I am intrigued. How many
22 languages do you speak?

1 A. I do Spanish and English and I have had some
2 German.

3 Q. You went to graduate school for German?

4 A. I was in undergraduate class where I had
5 German.

6 Q. You talked to Mr. Becker a little bit about
7 the Citizens Probation Authority. Were
8 you also a halfway house counselor for
9 delinquent boys?

10 A. Yes, I was.

11 Q. Can you tell me a little bit about that,
12 please?

13 A. That place was a place where the boys that
14 were -- well, they had committed
15 felonies. All of the boys that were in
16 there committed felonies of one kind or
17 another, except murder. They wouldn't
18 permit a murder charge for somebody in a
19 halfway house. Anything else they had
20 done, they could have committed and
21 probably have for one time or another,
22 because it is on the record. When we see

1 them, we know everything they have done.
2 It is not just one or two times. They
3 have had ten, 15, sometimes 20 felonies
4 in their background and it is not
5 exaggerating, we have seen those records
6 and we discussed them when they come into
7 the house. These people then, when they
8 get there, whichever Judge was in the
9 Court there, decided that these people
10 need more than just what maybe a Court
11 can say, or whatever he can do that need
12 more structure in their lives is
13 basically what he was saying. They would
14 go and send them to a place in Ohio.
15 They call it Fairfield School for Boys or
16 used to, and they have it in Michigan.
17 They send them there for a certain amount
18 of time. I forget the exact amount of
19 time it is, but after that time, while
20 they are in that place, they are not
21 allowed to do anything without permission
22 except breathe. That is the way it is.

1 Because they need structure. They need
2 more structure that they wouldn't get in
3 their life. After they get out of this
4 situation, they know we are not going to
5 be able to put them into a regular home
6 life situation. It is going to be
7 exactly the opposite where they came
8 from, where there was no structure. They
9 put them in our halfway house, where
10 there were some rules, but it wasn't
11 super strict rules that they had, that
12 they had just come from, a training
13 school in Michigan.

14 Q. Did you actually live in the halfway house or
15 just go there for duty shift?

16 A. I was there for duty shift.

17 Q. How long were you involved with the halfway
18 house -- months, years?

19 A. It was about nine months, I believe in that
20 area; nine months to a year.

21 Q. And any success stories during that nine
22 months?

1 A. Yes. Everybody that works there has
2 individual boys that they work with, and
3 so they assigned me to one of the boys
4 and the boy that I particularly had
5 turned out -- he had done the usual, some
6 of the things I feel was auto theft or
7 whatever it was he did, but he had a
8 range of things in his background, all
9 felonies like the other boys. I was able
10 to talk with him, counsel him and
11 eventually he was released from our
12 halfway house structure and he did go
13 back to where he was from and from what I
14 understood, he did have a very nice life
15 and a normal, what we consider normal
16 life. He didn't go back into his crime
17 life again and he got married from what I
18 understand and had a job. And as I
19 understand, he was almost what you call a
20 pillar of the community type thing.
21 Exact opposite of what he was in his past
22 life.

1 Q. Great. In your questionnaire, there was a
2 question about problems facing the
3 criminal justice system?

4 A. Right.

5 Q. And my recollection is that you answered that
6 question, that we could fix some of those
7 problems if we citizens and those of us
8 involved in the system worked together
9 better?

10 A. Right.

11 Q. Do you have any ideas how we could work
12 together better?

13 A. Well, I think some of the ideas would be
14 similar to what I did with the volunteer
15 job when I was in Michigan. That would
16 be one case where I wasn't paid to do
17 that. I was a volunteer when I went with
18 that boy that was mentally challenged or
19 whatever the legal term is there, and
20 this wasn't a halfway house situation.
21 This was the other one. That is one
22 example where a Judge had an idea and he

1 talked with Citizens Probation
2 Authorities, and what do you think of
3 this, and really both sides thought that
4 was good. And they ended up asking for
5 volunteers and I was the one that figured
6 I could help people in that way. That is
7 one example that I can think of.

8 Q. Before you went to work at K-Mart, you were a
9 teacher for a number of years?

10 A. Yes.

11 Q. How long did you teach?

12 A. Well, all together, it was probably about
13 eight years. I was in more than one
14 school district. All together about
15 eight years.

16 Q. For a portion of your teaching time, I believe
17 that you were, you spent time with
18 challenged students?

19 A. Yes.

20 Q. Were those high school students or younger?

21 A. They were all ages. The youngest I had was in
22 Kindergarten and the oldest was in high

1 school and everything in between there.

2 Q. You are also a lay leader in your church?

3 A. Yes, I am.

4 Q. What are the responsibilities of a lay leader?

5 A. Well, in our church, it may be different in
6 every church, in our church, what a lay
7 leader does is he gives up and when we
8 give the offering, he gives a little talk
9 of some type, whatever the person wants
10 to give, but give a little talk before
11 the offering. Then we have an offering
12 and after the offering is brought back
13 and received by the minister and the lay
14 leader, and the people that are there, he
15 gives a little prayer and that is
16 basically what the lay leader does in our
17 church. They can be other things, if
18 things need to be done, that is usually
19 what a lay leader does.

20 Q. The Judge is going to tell you that sympathy
21 has no place in the Courtroom. Feelings
22 of sympathy should not affect your

1 judgment. It is a Court of law, not a
2 Court of sympathy; do you agree with
3 that?

4 A. Yes.

5 Q. We ask jurors to do hard things. We ask
6 jurors to set aside, and you have heard
7 those words from the Judge, from
8 Mr. Becker, from me. Whether you can set
9 aside your opinions of the law if you
10 have them, whether you can set aside
11 impressions. We would ask you to do
12 really difficult things, and one of the
13 things we ask you to do is set aside
14 natural feelings of sympathy. Because
15 you will here testimony in this case that
16 will arise that you remember feelings of
17 sympathy. You may hear testimony that
18 Robert Fingerhut suffered or was
19 struggling for his life. You will see
20 photographs of a point blank gunshot
21 wound. You will see Coroner's
22 photographs, and they may be enlarged.

1 All of those things will naturally arouse
2 feelings of sympathy with you. You
3 understand that?

4 A. Yes.

5 Q. You have to do your best to set those feelings
6 of sympathy aside and test that evidence.
7 Will you do that?

8 A. Yes.

9 Q. And do you understand that even though
10 evidence evokes an emotional response
11 from you, sympathy, anger -- you have to
12 get over the emotional response and test
13 that evidence to determine whether it
14 ties Donna Roberts to the crime or not;
15 are you up to that, Sir?

16 A. Yes.

17 Q. You talked with Mr. Becker about the
18 presumption of innocence. How do you
19 feel about the rule of law that says that
20 jurors are to presume the accused
21 innocent?

22 A. Well, that is the law, so we don't have an

1 opinion about that. It's the law, so
2 that is what we have to do.

3 Q. Well, this is a free country. It is the law,
4 that is what you have to do as a juror.
5 That doesn't mean that you can't have an
6 opinion on the issue as long as you can
7 set aside your opinion. Am I clear to
8 you there?

9 A. Okay. I understand, I think, what you are
10 saying there.

11 Q. Do you have an opinion as to whether that is a
12 good rule or a bad rule?

13 A. Well, I think that if it is the law, then
14 whether we agree or disagree, it is still
15 the law and we have to follow it.

16 Q. If you had a -- strike that. You are a Union
17 representative in your building, is that
18 correct?

19 A. Not presently, no.

20 Q. You used to be?

21 A. I used to be, yes. Not at K-Mart though.

22 Q. If you had a close friend at work, who was

1 accused by management of some wrongdoing,
2 and you honestly in your heart believed
3 that your friend was not responsible for
4 that wrongdoing, you would require
5 evidence that that person did those
6 things before you would be willing to
7 change your mind, wouldn't you?

8 A. Yes, I would need to hear what both sides had
9 to say and what both sides had as
10 evidence.

11 Q. But if you honestly believed that your
12 co-worker did not do that, whatever the
13 wrong was, you would require evidence,
14 and we'll get to both sides later, you
15 would require evidence before you would
16 change your mind?

17 A. I would need some evidence, yes.

18 Q. And the evidence, you think you would take
19 that evidence at face value or you think
20 you might test it and look at it with a
21 critical eye?

22 A. First, I would assume everybody is telling me

1 the truth is what I start with, then I'll
2 work from there.

3 Q. In this trial, one of your big job
4 responsibilities is going to be to
5 determine the credibility of the
6 witnesses. The Judge is going to tell
7 you -- tell you that you can believe all
8 of what someone says, part of what
9 someone says, or none of what someone
10 says. You have to determine who is
11 telling the truth and who is not. And
12 just because a witness is sworn to tell
13 the truth, you can't assume that they are
14 telling the truth. Do you understand
15 that?

16 A. Yes.

17 Q. You have to test the believability of each and
18 every witness that testifies in this
19 case?

20 A. Yes.

21 Q. Will you do that?

22 A. Yes.

1 Q. Now, in that work problem that you and I
2 talked about. The first natural
3 inclination in that work problem is to
4 want to hear both sides of the story,
5 isn't it?

6 A. Right.

7 Q. In this case, you may be called upon to put
8 aside that natural inclination because
9 unlike that problem at work, in this
10 Courtroom there's a burden of proof and
11 there's only one burden of proof, and
12 that burden of proof will be on who?

13 A. On the State.

14 Q. And you are going to hold them to that burden
15 of proof?

16 A. Yes.

17 Q. You understand during this trial, Mr. Juhasz
18 and I, we could basically sit over here
19 and we could sit on our hands, if we
20 wanted to. I doubt that that will
21 happen, but we could. And if after they
22 have presented their evidence, you are

1 not firmly convinced, you would have to
2 vote not guilty, do you understand that?

3 A. Yes.

4 Q. Do you have any problem with the fact, and I
5 know that you will follow the
6 instructions of the Court, how do you
7 think about -- what do you think about
8 the rule that says the State has the
9 burden?

10 A. That is what is legally set up, we have to
11 agree with it. Whether we agree or
12 disagree, that's the way it is.

13 Q. The presumption of innocence and the burden of
14 proof, those are concepts that make this
15 country what it is. Do you understand
16 that?

17 A. Yes.

18 Q. Other countries don't have it. Forget about
19 Iraq, for European countries don't have
20 them. We're one of the few countries in
21 the world that honor and protects these
22 liberties. Do you appreciate that?

1 A. Yes.

2 Q. Crimes are made up of essential elements.

3 Essential elements are necessary
4 ingredients, and the Judge will define
5 for you, he will list at the end of the
6 case, all of the essential elements and
7 he will define them for you. The State's
8 burden of proof applies to each and every
9 essential element. They have to prove
10 all of them. Do you understand that?

11 A. Yes.

12 Q. Two out of three, three out of five doesn't
13 cut the mustard?

14 A. Yes.

15 Q. There are two counts of aggravated murder. It
16 is called alternative pleading, I guess.
17 There's one death, but alternative
18 theories. The first count is prior
19 calculation and design, aggravated
20 murder. That is purposely causing the
21 death of another by prior calculation and
22 design. That is the old premeditation,

1 advance planning. Do you have a handle
2 on that?

3 A. Yes.

4 Q. The second aggravated murder count is felony
5 murder, which is purposely causing the
6 death of another while committing another
7 felony, a special felony, in this case,
8 aggravated burglary or aggravated
9 robbery. Do you have a handle on that?

10 A. Yes.

11 Q. Purpose is an essential element of both of the
12 aggravated murder charges, which the
13 State must prove beyond a reasonable
14 doubt. As the Judge will tell you,
15 purpose is the same as intent. A person
16 acts purposely if it is his or her
17 specific intention to cause a specific
18 result. You got that?

19 A. Yes.

20 Q. Would you agree that the facts and
21 circumstances surrounding an act shed
22 light on the actor's intention?

1 A. It would usually seem so.

2 Q. For instance, if you leave a paper trail as
3 opposed to covering your tracks, it is
4 unlikely that your objective is unlawful?

5 A. Could be. I don't really know. Depends on
6 the individual situation, but could be.

7 Q. Let's look at it another way. If someone
8 openly meets in the light of day as
9 opposed to a secret rendezvous under
10 cover of darkness, it is unlikely the
11 object of that meeting is unlawful?

12 A. It would seem so.

13 Q. Will you hold the State to its burden of
14 proving Donna's intent by proof beyond a
15 reasonable doubt?

16 A. Yes.

17 Q. And you are also going to hear about
18 aggravated burglary, that's the third
19 count. And aggravated burglary is the
20 first death specification to the
21 aggravated murder counts. Do you
22 understand that?

1 A. Yes.

2 Q. One of the essential elements of aggravated
3 burglary is trespass. And the Judge will
4 define trespass to you, and I believe
5 that will be along the lines of to enter
6 or remain on the land or premises of
7 another. That make sense to you?

8 A. Yes.

9 Q. Will you hold the State to its burden of
10 proving trespass?

11 A. Yes.

12 Q. The fourth count is aggravated robbery, and
13 that is the second death specification to
14 the two aggravated murder counts. Do you
15 have a handle on that?

16 A. Yes.

17 Q. And in that, they are going to have to
18 convince you that there was an intent to
19 commit a theft offense.

20 A. Yes.

21 Q. And a theft offense necessarily involves the
22 taking or attempt to take property.

1 Correct?

2 A. Yes.

3 Q. Will you hold the State to its burden of
4 proving an intended theft offense?

5 A. Yes.

6 Q. You understand that the indictment in this
7 case is a piece of paperwork. All it
8 does is it informs Donna of the nature of
9 the allegations leveled by the State?

10 A. Yes.

11 Q. It is not evidence?

12 A. Right.

13 Q. No matter how many times it is read to you or
14 referred to during the course of this
15 trial, it does not become evidence.

16 A. Yes.

17 Q. Did you know that Grand Jury proceedings were
18 secret?

19 A. I understand they usually are.

20 Q. Did you know that Donna didn't know when this
21 case went to the Grand Jury, and
22 Mr. Juhasz and I didn't know. We weren't

1 there to test the evidence?

2 A. I have no idea one way or another about that.

3 Q. We were not there, I'm telling you. You can
4 accept my representation on this one.

5 Here, we can test the evidence, so the
6 evidence is different and your role is
7 different. You understand that?

8 A. Yes.

9 Q. You know a lot of police officers. You know
10 Captain Bacon here as I understand it?

11 A. Yes.

12 Q. Do you socialize with Captain Bacon?

13 A. I only saw him at the restaurant. That is the
14 only time I ever saw him.

15 Q. The other police officers you talked to us
16 about, Pete Pizzulo, Tony Leshnack, do
17 you socialize with those guys or do you
18 see them at the restaurant?

19 A. Just at the restaurant.

20 Q. When you would see them at the restaurant, do
21 you engage them in conversation?

22 A. I would talk with them, yes.

1 Q. Did you ever talk about their jobs?

2 A. Just in general, not about the individual
3 cases, but just in general.

4 Q. Well, there's going to be a whole bunch of
5 policemen that testify. Do you know Paul
6 Monroe, Detective Dillon, Albert Ray?
7 They are all from Howland.

8 A. I may have heard some of those names. I'm not
9 sure. I may have met them in the past.
10 I can't put a face with a name though.

11 Q. You understand as a trial juror, you will have
12 to test the credibility, determine the
13 believability of the police witnesses
14 just as you would any other witnesses?

15 A. Right.

16 Q. You agree with me, that uniform doesn't make
17 the man?

18 A. By itself, no.

19 Q. You have got to penetrate that uniform and
20 evaluate the testimony of the person
21 wearing the uniform; will you do that?

22 A. Yes.

1 Q. And policemen are, they are human beings just
2 like you and I, aren't they?

3 A. Yes.

4 Q. They have the same frailties, the same
5 limitations, they make the same mistakes,
6 correct?

7 A. Yes.

8 Q. The State's burden in this case is by a degree
9 of proof called proof beyond a reasonable
10 doubt. Did you know that that was the
11 highest degree of proof that we have in
12 this country?

13 A. I hadn't really thought about it. I suppose
14 you're right though.

15 Q. The Judge is going to define it to you at the
16 end of the case and I believe he's going
17 to tell you that proof beyond a
18 reasonable doubt requires that you be
19 firmly convinced of the allegations. And
20 proof of such character that an ordinary
21 person would be willing to rely and act
22 upon it in the most important of his own

1 affairs. You have made important
2 decisions in your life, whether to change
3 jobs, whether to get married, correct?

4 A. Yes.

5 Q. And before you make an important decision,
6 sometimes you make a check list, whether
7 it's in your mind's eye, or some people
8 actually write it out on a piece of
9 paper. Have you ever done that?

10 A. Sometimes.

11 Q. You put the positive things on one side and
12 the negative things on the other?

13 A. Sometimes.

14 Q. And then what most people would then try to do
15 is strike the negatives, because if you
16 can strike all of the negatives and you
17 still have the positives, you know that
18 that is the right decision for you,
19 right?

20 A. In most cases that is probably true.

21 Q. And I don't know what the decision is, but
22 we're striking the negatives from our

1 list, and we get down to one. And we
2 think about it, we investigate it, and no
3 matter what, it remains a reasonable
4 negative. You got me?

5 A. Yes.

6 Q. If that were to happen, you could not say
7 beyond a reasonable doubt that that
8 decision was the right thing for you?

9 A. Yes, I see what you are saying.

10 Q. And the same standard applies in this case.

11 And have you ever said to yourself, I am
12 going to give someone the benefit of the
13 doubt?

14 A. Yes.

15 Q. We sort of intuitively know, don't we, that
16 whether it is reasonable doubt or whether
17 it is unreasonable doubt, you never said
18 to yourself, "I'm going to give him the
19 benefit of an unreasonable doubt," have
20 you?

21 A. You're right.

22 Q. And will you hold the State of Ohio to its

1 burden of proof beyond a reasonable
2 doubt, during the course of this trial?

3 A. Yes.

4 Q. As Mr. Becker told you, the State may elicit
5 or rely on some circumstantial evidence.
6 And I believe he gave you a plastic bat
7 as an example. I have four brothers, and
8 there were numerous occasions when one of
9 us got whacked in the head with a whiffle
10 bat. If it was me doing the whacking,
11 and I knew that Jamie was running to Mom
12 and I was left holding the bat, "Hey,
13 Ken, would you hold this bat for me," so
14 that when Mom came in, Mom assumed that
15 Ken whacked him with the bat. So you
16 have got to test these inferences that
17 you are asked to make; do you understand
18 that?

19 A. Yes.

20 Q. Will you do that?

21 A. Yes.

22 Q. And an inference is nothing more than a leap

1 in logic, isn't it?

2 A. Yes.

3 Q. So you have to make sure that the leap is
4 reasonable?

5 A. Yes.

6 Q. And one final thing and I'll sit down. I'm
7 glad I don't have Mr. Becker's water
8 bill, but let's change this from water to
9 snow. You go to sleep at night, you wake
10 up in the morning and there's snow on the
11 ground, you know it snowed?

12 A. Yes.

13 Q. It is Sunday morning, you got your cup of
14 coffee, you want your newspaper, you look
15 out and there's footprints from your
16 neighbor's yard across the driveway to
17 your front door, across your yard to your
18 front door and onward. So you assumed
19 that your newspaper is delivered and that
20 might be a reasonable assumption, right?

21 A. Yes.

22 Q. Until you go to the door to see if it is your

1 newspaper, and instead of your newspaper,
2 it is your Giant Eagle coupons. All you
3 can really infer is that somebody walked
4 across your yard. You can't infer who
5 that was. Am I making sense to you?

6 A. Yes.

7 Q. Will you test every inference that the State
8 asks you to make in this case?

9 A. Yes.

10 MR. INGRAM: I thank you for your
11 time and attention. After our conversation,
12 whereas predicted, I did most of the talking. Is
13 there anything you want to bring up? Is there
14 anything you want to share with us?

15 MR. CARAWAY: No.

16 MR. INGRAM: I thank you very much.
17 Have a pleasant day.

18 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
19 OF HEARING)

20 THE COURT: Sir, you will be in the
21 pool from which this Jury will be selected. Check
22 with Connie downstairs to get instructions on when

1 you are to call in. I would again remind you that
2 you are not to read anything in the newspaper or
3 watch anything on T.V. or have any discussion with
4 anybody concerning this matter until you return.

5 Thank you for your time.

6 (JUROR NO. 9, MR. CARAWAY, LEFT THE COURTROOM.)

7 THE COURT: For the record, both
8 sides have passed for cause on Mr. Caraway. Let's
9 take a five minute recess.

10 (Court in recess at 10:35 A.M.)
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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.

Mary Ann Mills

MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO) VOLUME IV
5 Plaintiff)
6 - vs -) INDIVIDUAL VOIR DIRE
7 DONNA M. ROBERTS)
8 Defendant)

9 BE IT REMEMBERED, that on Friday, April 11,
10 2003, these proceedings came on to be heard before
11 one of the Judges of this Court, John M. Stuard,
12 in Courtroom No. 2, on High Street, Warren, Ohio,
13 before the case heretofore filed herein.

14
15
16
17 Mary Ann Mills, RPR
18 Official Court Reporter
19 Trumbull County, Ohio
20
21
22

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I N D E X

VOLUME IV:

(Friday, April 11, 2003)

Individual Voir Dire:

Frederick Calhoun	773
Sheri Senek	886
Maxine Howard	966

1 (Friday, April 11, 2003)

2 (Juror No. 18, Frederick Calhoun, entered the
3 Courtroom.)

4 THE COURT: Mr. Calhoun, you have
5 read that handout given to you, is that correct?

6 MR. CALHOUN: Which one?

7 THE COURT: The explanation of what
8 this is all about.

9 MR. CALHOUN: Yes, downstairs.

10 THE COURT: So you have a pretty
11 good idea at this point. It is necessary that we
12 go through what is about to follow here. There are
13 those among us who believe in the Old Testament
14 covenant of an eye for an eye. Someone kills
15 someone, they should forfeit their life. That is
16 not the law of Ohio. There are others who could
17 under no circumstances, because of the religious,
18 ethical and moral considerations, put themselves in
19 a position where they would be called upon to
20 determine the possibility of imposing a death
21 sentence on someone. Now this case will proceed as
22 any ordinary case in that the trial will consist of

1 one question and one question only, and that is
2 whether the Defendant is guilty as charged or not.
3 It will be required that the State of Ohio, through
4 the Prosecutor's Office establish proof beyond a
5 reasonable doubt by showing this Jury evidence
6 concerning that question. If this Jury decides
7 after that presentation that the State has failed
8 to carry their burden of proof, and a proper
9 verdict would be that of not guilty.

10 However, if the State should maintain and
11 prove that burden of proof, then this Jury would be
12 required to sit on a second phase, and that
13 question -- the question presented to that Jury on
14 the second phase would be that they would have the
15 burden of proving this also. The burden is always
16 on the State. The Defendant has to do nothing.
17 There's the presumption of innocence that applies
18 throughout the trial, unless and until the State
19 proves beyond a reasonable doubt those elements
20 necessary to prove their case. So at that second
21 phase, the State would present evidence showing
22 aggravating circumstances. Those are reasons that

1 the State is proffering to the Jury to show why the
2 Jury should consider and perhaps impose the death
3 penalty.

4 The defense has an opportunity to present
5 mitigating factors, and those are things that are
6 explained for the Jury to mitigate or to show the
7 reason why they should not impose the death
8 penalty. So you get a person that has extreme
9 views, an eye for an eye or, "I can't ever do
10 that." They could not be fair to one side or the
11 other by sitting on a Jury.

12 And from this entire panel, we'll have a
13 panel of both types, and that is fine. Everybody
14 has a right to their opinion on this issue. But I
15 suspect the majority of people that were called in
16 are of the type that whether they favor the death
17 penalty in some ways or look disfavorably upon it,
18 in other ways, they are capable and willing to tell
19 us and to accept the fact themselves that, "I'm
20 able to follow the law, whether I agree with it or
21 disagree with it. I don't have any fixed opinion
22 that I'm not able to follow the law." That is the

1 only way that we can assure both sides that they
2 have a fair trial.

3 Now if you happen to be a person that
4 feels you can't do that, that is fine. You have a
5 right to have your own feelings, but it just
6 wouldn't be fair to sit on any Jury of this type,
7 if there's some overriding consideration in your
8 mind that would cause you difficulty in listening
9 to the evidence and deciding this matter fairly on
10 the evidence, and then being able to fairly listen
11 to both sides if it goes to a second phase, and
12 give them a fair call. That is all that both sides
13 here are asking for is fairness.

14 So, the questions that will be put to you
15 will be geared towards your feelings and thoughts
16 on the death penalty itself, whether you are able
17 to give them your assurance that you could be fair
18 and impartial. And the other issue is that
19 concerning pre-trial publicity. We live in a
20 rather small county. We have two newspapers
21 really. They have both covered this matter, which
22 is not unusual. Anything of any notoriety is going

1 to be covered in the newspapers. But the issue is
2 whether you or the rest of the jurors have been so
3 immersed in the coverage that it would deny a fair
4 Jury to one side or the other. And more
5 rationally, that would be probably on the
6 Defendant's side. It would not do us much good to
7 go through this exercise having a Jury, if the Jury
8 have already pretty much made their mind up about
9 the facts, because the facts that any of you know
10 at this point may be totally in error or they may
11 have been improper conclusions drawn.

12 This Jury has to listen to the evidence
13 they will hear in this Courtroom and decide this
14 matter only on that evidence, not something that
15 appeared sometime prior to today in the newspaper.
16 So you understand where we're going?

17 MR. CALHOUN: Yes.

18 THE COURT: Mr. Bailey.

19 EXAMINATION BY MR. BAILEY OF MR. CALHOUN:

20 Q. My name is Ken Bailey. I'm Assistant

21 Prosecutor with the Trumbull County

22 Prosecutor's Office, and I'm going to be

1 joined this morning maybe, by Chris
2 Becker, my co-counsel, another Assistant
3 Prosecutor, who is engaged in another
4 Courtroom right now in a proceeding. And
5 I'm going to ask you some questions this
6 morning about pre-trial publicity, the
7 death penalty, and your views on it, and
8 then some general questions pertaining to
9 this case, and things that we usually go
10 through with jurors. Now, I know that we
11 live in modern times, and we have the
12 advantage of looking at your
13 questionnaire, the answers that you
14 filled out. And I know that you read the
15 local paper, right, the Tribune?

16 A. Warren Tribune.

17 Q. And you are aware that the co-defendant's
18 case, that Nate Jackson's case has
19 already been disposed of?

20 A. Yes.

21 Q. Now, because we live in modern times, it is
22 normal for folks to gain information, if

1 they are aware of what is going on in
2 their community. They read the
3 newspapers, they watch T.V., they talk to
4 other people in the community about
5 something. It is hard to get away from
6 the news that is on T.V. and radio. It
7 is on the Internet, if you have got a
8 computer. So, being a citizen today is
9 different from maybe 40 or 50 or 70 years
10 ago, where publicity wasn't so
11 persuasive. The key thing is, not
12 whether you have heard about something,
13 or whether you have discussed it or even
14 formed an opinion, the important thing
15 is, can you set aside what you learned
16 before and come into this proceeding, and
17 start out with a clean slate? And
18 there's a reason for that. When a
19 newspaper reporter comes in to a
20 Courtroom and reports on something, they
21 do a feature based on the time that they
22 have been in the Courtroom, and as you

1 look around the Courtroom today, there's
2 nobody here from the media. It may be
3 that somebody comes in, T.V. cameras, may
4 come in to do a feature, they are not
5 allowed to photograph the jurors. If
6 they photograph jurors on a Jury view,
7 all you see are feet. But they can't
8 show your faces. They may come in and
9 may take pictures of the Judge or the
10 Attorneys or the Defendant, sometimes
11 some of the witnesses. But they don't
12 photograph the jurors. But they are not
13 here all the time. You will see they may
14 be popping in or out. They may stay for
15 a little bit of time, but one important
16 thing about that is, if they are here for
17 maybe three minutes or ten minutes or 20
18 minutes, they are going to miss
19 everything that happened before they came
20 in, and they are going to miss all of the
21 questions and answers that occurred after
22 they leave, so their impression may well

1 be lopsided. It may be accurate or it
2 may be totally inaccurate, so if you have
3 the occasion to serve as a juror on this
4 particular case and you have somebody
5 save the newspapers for you and you go
6 back and you read them afterward, you may
7 say to yourself, "Well, Gosh, I sat on
8 this trial for the whole trial, and I
9 remember I was in Court that day and I
10 heard these witnesses testify, and what
11 this reporter had, that was just a little
12 portion of it and it totally gave a
13 misimpression of what happened in Court
14 that day." It was totally different,
15 because they missed everything that
16 happened before and after.

17 So, you understand that there's room
18 there, not deliberately on the part of
19 the reporter, but by the very nature of
20 their business, rushing into print and
21 not being here all the time, they may
22 have misinformation in their prior

1 articles. So that is why it is very,
2 very important when we come into Court
3 here with another trial, and another
4 Jury, that you gain all of your
5 information from what happens in this
6 Courtroom. Can you do that? Can you set
7 aside anything you might have read before
8 or any opinions you might have formed?

9 A. I haven't -- I have read about it, but I
10 haven't like, if I would just start
11 reading an article -- I felt I know
12 enough about that and I wouldn't finish
13 the article lots of times. Like when the
14 other gentleman was convicted, I didn't
15 read the whole story. I just read that
16 he was convicted and --

17 Q. You skipped it?

18 A. I didn't read it to try to get every little
19 detail that had happened in the case,
20 which I don't know if they put in the
21 paper, but I skipped it. I know some, I
22 can't say I know nothing about the case,

1 but I feel I do know some things that I
2 have read in the paper that I assume are
3 true, but I don't know to be true, but I,
4 if I were put on the Jury, I would look
5 at the stuff in front of me and be honest
6 and try to be fair.

7 Q. That is all we can ask you to do. It is
8 important that based on our American
9 system of justice, that we have jurors
10 who come in and try to be fair to both
11 sides, so that both sides get a fair
12 shake, both the Defendant and the people
13 of the State of Ohio. It is not like the
14 system overseas where maybe in Europe or
15 France where somebody may be presumed
16 guilty and they have got to prove their
17 innocence or in Turkey or Iraq or
18 somewhere else.

19 Now, we're sort of asking you to go
20 back to school and it is like taking a
21 class and whatever you learn, you are
22 starting with a blank slate and it is

1 going to be written on that chalkboard,
2 here in this Courtroom. You will have to
3 rely on the testimony of the witnesses
4 who testify from that stand, and the
5 physical Exhibits that are admitted into
6 evidence, and the instructions of law
7 given to you by the Judge. I take it you
8 have done things before like that, when
9 you learn to cook, you set aside any
10 preconceived notions you might have had,
11 or safety rules for hunting, you learn
12 those things and you set aside the stuff
13 maybe from when you were a little kid and
14 you learned how to do things and you made
15 your decisions as an adult based on what
16 you learned after, right?

17 A. Right.

18 Q. The death penalty itself. I noticed you are
19 in favor of the death penalty as a
20 punishment for certain types of crimes?

21 A. For certain things. I would have to say that
22 for certain things, I do definitely favor

1 the death penalty. I don't go eye for an
2 eye or something like that, but on
3 certain things that I think it is only
4 fair.

5 Q. What is it based on, a personal, morale or
6 religious belief or a combination?

7 A. To kill somebody is doing the worst thing you
8 can do to them, but to plan it and you
9 know a person can say, "I'm going to kill
10 you," and if they think about it long
11 enough, they should straighten themselves
12 out. If you plan it and plan it, and do
13 it, then you should be thinking, "If I
14 get caught doing this, I'm going to have
15 to pay the penalty." That is how I feel
16 about it.

17 Q. You feel people should be held accountable for
18 their actions?

19 A. Right.

20 Q. Now you understand that your personal feelings
21 about what the possible penalty should be
22 may be different from what the State

1 legislature sets out?

2 A. Yes.

3 Q. And under our system of justice it is
4 important, being a nation of laws, that
5 we follow the law, that it is important
6 we set aside our personal views and
7 follow the instructions of law given to
8 us by the Judge. Can you do that?

9 A. I hope so, yes.

10 Q. Now, for example, you talk about a
11 premeditated killing. You understand
12 under our system of justice in this
13 state, the State legislature has said,
14 "Well, if Ken Bailey goes out there and
15 tells the whole world on Courthouse
16 steps, I'm going to kill my co-counsel,
17 Chris Becker, I am going to take a gun
18 and shoot him on April 12th, at high
19 noon," and I do that, that is not a death
20 penalty offense under the laws of the
21 State of Ohio. Just for purposely
22 killing another person, it is prior

1 calculation and design. There have to be
2 certain extra factors, certain findings
3 of fact in addition to that, to make me
4 eligible for a death penalty offense the
5 way the legislature has written the law.

6 A. All right.

7 Q. You understand that all killings are not
8 treated equally under the law. For
9 example, let's say you are out in the
10 woods, you are building a campfire and
11 you get some logs out there and you got
12 an axe and you are chopping the wood, and
13 the axe head flies off the axe handle and
14 killed somebody who is standing there
15 nearby. That is an accident?

16 A. That is an accident.

17 Q. There wouldn't be any punishment for that?

18 A. No.

19 Q. Somebody who is driving drunk down the road
20 and goes off the road and kills a little
21 girl, that probably wouldn't be a death
22 penalty offense, would it?

1 A. No.

2 Q. Because it wasn't done on purpose and it
3 wouldn't make the other standards the
4 legislature would set up. For killing
5 somebody on purpose, maybe I get angry
6 with somebody in a bar, and I punch them
7 out and he falls back and hits his head
8 on the counter and dies as a result of
9 that, that may be a manslaughter, right?

10 A. Yes. I couldn't consider that -- I don't
11 think you mean to kill even though you
12 are fighting with them.

13 Q. Let's say I mean to kill somebody. I pull out
14 a knife and stab them in the heart. That
15 could be murder, but that type of
16 offense, I'm not going to get the death
17 penalty for. I may go to prison for
18 life, some type of penalty for that, but
19 it won't be the death penalty most
20 likely.

21 A. Right.

22 Q. Now, the legislature has set up certain

1 parameters for the death penalty in the
2 State of Ohio. They have set up a two
3 phase trial proceeding. So that this
4 case is tried in two different parts.
5 The first part of this trial deals with
6 the issue of guilt or non-guilt. The
7 Defendant is charged with the number of
8 crimes, and those crimes contain certain
9 elements or essential component parts.
10 And we have to prove those elements of
11 the crime by proof beyond a reasonable
12 doubt so that you are firmly convinced of
13 the truth of the charge to a moral
14 certainty.

15 And the Judge is going to give you
16 instructions about proof beyond a
17 reasonable doubt, and what these elements
18 are, and he's going to tell you, you have
19 got to use your reason and your common
20 sense and you are used to doing that.
21 Somebody who hunts has to use a lot of
22 reason and common sense, right?

1 A. Right.

2 Q. And because of the fact that the first -- the
3 first part of this trial, the first phase
4 of this trial deals with guilt or
5 non-guilt, there are certain things that
6 would not be relevant to that first
7 phase, like the issue of punishment would
8 not come in at all in the first phase.
9 Just the issue of whether we prove that
10 the Defendant did what she's charged with
11 doing by proof beyond a reasonable doubt.
12 If we do prove those things, the Jury
13 finds the Defendant guilty of a crime
14 called aggravated murder, and guilty of
15 one or more specifications of aggravating
16 circumstances, that make her eligible for
17 the death penalty. Then and only then,
18 we would go on to a second phase and the
19 second phase would deal with what is the
20 appropriate punishment for this
21 Defendant, for this crime. And in that
22 second phase -- Mr. Becker is here. And

1 in the second phase, there would be a
2 balancing test that would be performed,
3 and in the second phase, you could hear
4 different testimony. You might hear the
5 same testimony. We present it, but the
6 Defendant at the second phase has an
7 opportunity to produce what we call
8 mitigating factors. These are things
9 that would work to a Defendant's benefit,
10 and would work against the imposition of
11 the death penalty as a possible
12 punishment. Because -- and you wouldn't
13 have heard any of that stuff in the first
14 phase, because it is not relevant. The
15 only issue in the first phase is guilt or
16 non-guilt, right?

17 A. Right.

18 Q. So, let's say we get to the second phase. At
19 that point, you would have to do a
20 balancing test. You would have to
21 balance on one side of the scale the
22 aggravating circumstance or circumstances

1 that the State would have presented, and
2 on the other side are these mitigating
3 factors presented by the Defense. We
4 don't know what they are at this point.
5 It is not relevant. It is not really
6 important at this point, but if we get to
7 that second phase, you will hear about
8 them. And then you have to decide
9 whether the aggravating circumstance or
10 circumstances outweigh these mitigating
11 factors by proof beyond a reasonable
12 doubt. And if they do, and after you and
13 the other 11 jurors deliberate, and if
14 you decided that the aggravating
15 circumstance outweighs the mitigating
16 factors, then you would return a verdict
17 as to the death penalty. You understand
18 the death penalty is not an automatic
19 punishment for somebody who has been
20 found guilty in the first phase of
21 aggravated murder with one or more death
22 penalty specifications.

1 A. I don't really understand that at all.

2 Q. You don't understand because you haven't heard
3 anything at all about what the mitigating
4 factors would be. You have no idea what
5 would be the appropriate punishment at
6 the end of the first phase. All you have
7 decided at the end of the first phase is
8 that the Defendant is guilty of their
9 four different charges here and different
10 specifications or special findings tacked
11 on. If you find she's guilty at the end
12 of the first phase of aggravated murder
13 with one or more death specifications, it
14 just makes her eligible for the death
15 penalty. It is not an automatic death
16 penalty --

17 A. If she's convicted of that, then you have to
18 go that way.

19 Q. Under our law in this state, then you must
20 consider the evidence presented at the
21 second phase. It's not an automatic
22 death penalty. Because there may be a

1 whole lot of things that can come into
2 play on behalf of the Defendant, and you
3 may say, "Gosh, if I learn these things,
4 I won't impose the death penalty. It's
5 not a fair punishment for this
6 Defendant." There may be things that
7 work in her favor. And in that case, if
8 she's not allowed to present those, it
9 wouldn't be fair.

10 And what I want is you want to hear
11 everything in the second phase so you can
12 make a decision.

13 A. So you are saying, first we'll have the trial?

14 Q. First part of the trial is the guilt phase
15 like any other trial.

16 A. If convicted, then we go through like another
17 trial type phase?

18 Q. Yes.

19 A. I thought it was like you sat in the office
20 and decided.

21 Q. It is two trials?

22 A. Two trials.

1 Q. The first trial is like any other trial, you
2 hear testimony relating to basically the
3 issue. In the first phases can we prove
4 her guilty of the elements of these
5 crimes by proof beyond a reasonable
6 doubt? And you and the jurors make a
7 decision. If you find that we don't live
8 up to our burden of proof then and you
9 don't find her guilty of aggravated
10 murder with one or more of these death
11 penalty specifications of aggravating
12 circumstances, then we don't go on to the
13 second phase. The only time we go on to
14 that second phase, if we convince you
15 beyond a reasonable doubt that she's
16 guilty of aggravated murder and one or
17 more of these death specifications.

18 Let's say we go to the second phase.
19 And in this second phase, there are four
20 possible punishments. The first possible
21 punishment is the death penalty. The
22 second possible punishment is life

1 without any possibility of parole. The
2 third possible punishment is the sentence
3 of life in prison with parole eligibility
4 after 30 full years. And the fourth
5 possibility is a sentence of life in
6 prison with parole eligibility after 25
7 full years.

8 Now, if evidence is presented in the
9 second phase, and you do this balancing
10 test, you and the other jurors, and you
11 decide that we have proved beyond a
12 reasonable doubt that the aggravating
13 circumstance outweighs the mitigating
14 factors, then you must return a death
15 penalty verdict. You understand that?

16 A. Right.

17 Q. If we don't convince you beyond a reasonable
18 doubt that the aggravating circumstance
19 outweighs these mitigating factors beyond
20 a reasonable doubt, then you go on to the
21 three life factors or three life
22 sentences. And you understand, you have

1 to consider each of those three possible
2 life sentences equally to start out with.
3 Then you and the other jurors deliberate
4 and decide which is the appropriate
5 penalty for this Defendant after you have
6 listened to all of the evidence. Can you
7 do that?

8 A. Yes.

9 Q. The legislature says you are supposed to do
10 that.

11 A. Yes.

12 Q. And it is important, it is very important that
13 you do that, so that both sides get a
14 fair shake. It is important that the
15 Defendant gets a fair trial. It is
16 important that the people of the State
17 get a fair trial.

18 A. Okay.

19 Q. You would be able to do that? You would be
20 able to set aside your personal feelings?
21 You indicated on your sheet, you tend to
22 favor the death penalty?

1 A. I do on certain things. If somebody hits
2 somebody over the head with a frying pan
3 for just a thing like that, it is
4 different. I think if you plan on it,
5 you should have time to come to your
6 senses. That is my feelings.

7 Q. And that is good. It is important that we
8 have all kinds of opinions in our
9 society. We have a lot of diversity in
10 our society and it may well be after you
11 hear all of the evidence, and you
12 deliberate with the other jurors, you all
13 come to the same conclusion that the
14 death penalty should be the appropriate
15 penalty in this case, but it may be after
16 you listen to all of the testimony,
17 whatever is presented in that second
18 phase, that would work to the Defendant's
19 benefit, that you and the other jurors
20 decide, "Hey, the death penalty really
21 isn't the right penalty in this case, it
22 should be something less."

1 A. Okay.

2 Q. Because the State hasn't proved that the
3 aggravating circumstance or
4 circumstances, outweigh the mitigating
5 factors?

6 A. Right.

7 Q. On the other hand, if it does, if the
8 aggravating circumstances do outweigh the
9 mitigating factors beyond a reasonable
10 doubt, then the death penalty would be
11 appropriate?

12 A. Right.

13 Q. But we won't know that until all of the
14 evidence is in on both phases. Now you
15 understand that as she sits there, this
16 Defendant is presumed innocent, as are
17 all other Defendants tried in this
18 Courtroom. It is only fair. As she sits
19 there now, no evidence has been
20 presented. If you had to vote right now
21 which nobody would ever do, you would
22 have to find her not guilty, because we

1 haven't presented any evidence of guilt
2 as to these elements. And the burden of
3 proving those elements is on us, the
4 people of this state. If we screw up, if
5 we leave out one of these elements, you
6 have got to find her not guilty of that
7 particular crime. And you are to
8 consider each of these crimes and their
9 elements separately.

10 There are four different crimes that
11 are charged here. The Defendant is
12 charged with -- there's two counts of
13 aggravated murder. There are two
14 different theories of aggravated murder.
15 There's one dead person, but the State
16 has allowed to and has charged the
17 Defendant two different ways on two
18 alternate theories of this crime of
19 aggravated murder.

20 One of these counts or charges of
21 aggravated murder deals with prior
22 calculation and design. That is the old

1 sort of like the old premeditation. It
2 requires lot of forethought and planning.
3 The second count of aggravated murder
4 deals with what we call felony murder,
5 that the killing was done purposely, and
6 that it occurred during the course of an
7 aggravated burglary and/or aggravated
8 robbery.

9 Now, there's also, there are also
10 specifications, these death penalty
11 specifications that are attached to these
12 counts of aggravated murder. And the
13 specifications are basically a fancy word
14 that just means a special finding of fact
15 that a Jury has to consider. And these
16 special findings of fact are aggravating
17 circumstances, first of aggravated
18 burglary, that the aggravated murder was
19 committed during the course of an
20 aggravated burglary and the Defendant
21 committed the aggravated murder with
22 prior calculation and design. And the

1 second specification is that the
2 aggravated murder was committed during an
3 aggravated robbery as opposed to
4 aggravated burglary and that the
5 Defendant committed the aggravated murder
6 with prior calculation and design. Now,
7 another important thing is the Defendant
8 is not the trigger person in this case.
9 The fellow by the name of Nate Jackson
10 that you are going to hear about. That
11 is the person who actually committed the
12 crimes, the aggravated murder, the
13 aggravated burglary, the aggravated
14 robbery. But, the Defendant is charged
15 as a complicitor, somebody who solicits
16 or procures or aids or abets another
17 person in purposely committing the crime.
18 In this case, the aggravated murder of a
19 fellow by the name of Robert Fingerhut
20 with prior calculation and design and/or
21 during the course of an aggravated
22 burglary and aggravated robbery and with

1 a working gun, a firearm. In other
2 words, she's charged with inviting him or
3 leading him on or getting him or helping
4 him or assisting or strengthening him in
5 planning this crime, planning with him in
6 committing this crime and the killing of
7 her ex-husband for insurance money and to
8 steal a car.

9 Now, each of these crimes is
10 composed of certain elements. An element
11 is an essential component part of a
12 crime. Like you like to cook, what do
13 you cook? What kind of cooking do you
14 do?

15 A. I Cook chili. I have been in chili cook-offs
16 and things like that. Prime rib. I cook
17 everything.

18 Q. Let's say you make chili. You have got
19 certain ingredients in that recipe,
20 right?

21 A. Right.

22 Q. And there are a lot of different recipes for

1 chili, but you have a favorite recipe.

2 And does it include some hot sauce?

3 A. Yes.

4 Q. So let's say each of these crimes, just like a
5 recipe has certain key ingredients. For
6 example, let's take the crime of
7 aggravated murder with prior calculation
8 and design. The Judge is going to
9 instruct you on the elements of these
10 crimes at the end of this case. And you
11 have got to follow his instructions.
12 What I tell you now, isn't the law. But
13 I'll give you an example, for instance
14 here. We're going have to prove for
15 instance, that it happened on or about a
16 certain date and time, like December 11,
17 2001. That it happened here in Trumbull
18 County, Ohio, so that we can try this
19 case in this Courtroom and not up in
20 Cuyahoga County or down in Tuscarawas.
21 Third, identification that the Defendant
22 is a person that committed this crime is

1 a complicit. Somebody is going to have
2 to come in and point her out. Fourth,
3 that she did it purposely, not by
4 accident, but rather she did this
5 purposely and the Judge will define that
6 term for you, basically on purpose.
7 Fifth, that she caused the death of
8 Robert Fingerhut, a living person. And
9 sixth, that she did it with prior
10 calculation and design. We're going
11 have to prove those particular things.

12 Now the Defendant doesn't have to do
13 anything. Under our system of justice,
14 they just have to sit there. They can
15 sit on their hands if they want. They
16 don't have to do anything. And it is
17 totally up to us and it is only fair,
18 because we're asking you to consider the
19 death penalty in this case. It is only
20 fair that that burden is entirely on us,
21 the people of this state. You agree with
22 that?

1 A. Yes.

2 Q. Now, these -- if we leave out an element.

3 Let's say we go through this whole trial
4 and we forget to say that it happened in
5 Trumbull County. You have to find her
6 not guilty, because we screwed up and
7 didn't put on the elements. We weren't
8 able to convince you beyond a reasonable
9 doubt of all of the elements.

10 A. You mean --

11 Q. That is the law.

12 A. That seems to be like a loophole.

13 Q. And you mentioned loopholes. You don't like
14 loopholes?

15 A. No. If you would find somebody guilty and
16 they said, you know, you didn't say they
17 were shot at such and such an address.
18 To me that is not right.

19 Q. But that is the law.

20 A. That is the law.

21 Q. And I mean there are different types of
22 loopholes, and one of the basic concepts

1 of criminal law in this country is the
2 Prosecution has to prove the elements of
3 the crime. And that is why your tax
4 dollars go to paying our salaries to see
5 that we do a good job in doing that. We
6 have got to put on evidence. And let's
7 say for some reason, we're not able to
8 prove an element. Then under the law --
9 and you may say, "Hey, they gave it a
10 good try, but the testimony just wasn't
11 there for something on one of these
12 crimes." Let's say for aggravated
13 burglary, you didn't like the way
14 something happened. You may say there's
15 an aggravated robbery, but not aggravated
16 burglary, then you would have to find the
17 Defendant not guilty if we can't convince
18 you beyond a reasonable doubt that all of
19 those elements exist in that particular
20 crime. You are to consider each crime
21 separately.

22 A. I don't know the difference between aggravated

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1 burglary or a robbery anyway.

Q. Well, the Judge is going to tell you at the end of this case and he will give you instructions. Basically, burglary is when you trespass inside a structure that is occupied and you go in and commit some type crime. Whether you are going to steal something, you are going to kill somebody, and there are more elements there. On a certain date in the County, identification of the person, but the Judge will tell you what those elements are. Robbery basically is taking something from another person by force or threat. But the Judge is going to tell you what those elements are and you are bound under the law. Under our system of justice to follow what Judge Stuard tells you; can you do that?

20 | A. I hope so.

21 Q. That's all we can ask. It is important that
22 we get a cross section of the community,

1 with all kinds of educational background.
2 Some folks have finished high school.
3 Some people have gone on to college. But
4 one thing that is important with every
5 juror is use of reason and common sense.
6 That is the test for proving something by
7 proof beyond a reasonable doubt. You
8 understand it is not beyond all doubt or
9 a shadow of a doubt. I think there's an
10 Alfred Hitchcock movie, "Beyond the
11 Shadow of a Doubt". That is not the test
12 in this Courtroom. The test in this
13 Courtroom is the test that is used in
14 every criminal cases that is tried.
15 Whether it is a shoplifting or burglary
16 or robbery or aggravated murder or
17 possible death penalty case. And the
18 Judge is going to tell you, you are going
19 to use your reason and common sense in
20 coming to a conclusion and you use that
21 every day. You use it at work when you
22 are working. You use it when you are

1 cooking, when you are mixing up the food.
2 You use it when you are hunting. It is
3 something that you are used to dealing
4 with. You have raised kids. You got to
5 use a lot of reason and common sense when
6 you are raising your kids.

7 A. Yes.

8 Q. This is no stranger to you, this process?

9 A. Right.

10 Q. It is something you are used to. There's also
11 a specification of a firearm attached to
12 the crimes of aggravated robbery, and
13 aggravated burglary. And that charges
14 that basically, the Judge will instruct
15 you as to the elements of that, but a
16 working gun was used.

17 A. My opinion of that is I would rather be shot
18 than hacked to death with an axe, so I
19 know there's a lot of stuff on guns and
20 stuff now where people are, "Well, he
21 used a gun." Well, I would rather them
22 use a gun than an axe.

1 Q. I agree with you, but the legislature hasn't
2 set up any axe specifications.

3 A. Maybe at one time it was. Use an axe.

4 Q. Guns are much more violent if you are going to
5 kill somebody. Now, while I am at it, do
6 you have any questions that we can
7 answer? Because this is the only chance
8 that we get to talk face to face until
9 the whole proceeding is over and that
10 means both sets of the trial, assuming we
11 get to a second phase. Because we're not
12 allowed to have any communication with
13 you during the course of this trial,
14 except for this part right here. If you
15 have any questions, you have got to ask
16 Laurie Brown, the Bailiff, or Mary Ann or
17 the Judge. If we see you out in the
18 corridor or the hallways, the elevator,
19 we're not being anti-social, it is just
20 that under our rules of conduct, we're
21 not allowed to have any contact with the
22 jurors, otherwise it could result in a

1 mistrial. So I want you to understand
2 that both sides aren't being anti-social
3 here, it is just the way we're forced to
4 conduct ourselves.

5 And while we're having this give and
6 take right now, this Jury selection
7 process, do you have any questions that
8 you have about what we're doing that
9 pertains to this case that you think
10 maybe we can clear up?

11 A. No, not really. I can't think of anything
12 right offhand.

13 Q. Now you have had the experience of being a
14 juror in a prior civil case?

15 A. Yes.

16 Q. And the instructions of the burden of proof is
17 totally different in a civil case. There
18 it is by a preponderance of the evidence.
19 The scale has to tip a little bit. In
20 this case, we're talking about proof
21 beyond a reasonable doubt, and the Judge
22 is going to define that for you. It is a

1 heavier burden of proof, but it's not
2 beyond all doubt or beyond a shadow of a
3 doubt. It is based on the use of your
4 reason and common sense. So that if you
5 are firmly convinced to a moral
6 certainty, then we have proved our case.
7 And you have had the experience of
8 deliberating before with other jurors?

9 A. We really didn't have to decide whether a
10 person was guilty or anything. It was
11 more like how much damage they should
12 get, and it wasn't really like it was
13 somebody's fault. The guy admitted that
14 he ran into the other person. It is just
15 I guess they were suing for more than the
16 insurance company wanted to pay or
17 something. So we had to decide what the
18 payoff would be.

19 Q. And the Judge instructed you as to the law,
20 and you were able to follow the law in
21 coming to a conclusion, right?

22 A. Right.

1 Q. So you have had experience doing something
2 like this before? This is a different
3 type of case. Now, there are different
4 types of evidence that can be produced in
5 a criminal case. Some of these, some
6 types of evidence what we call direct
7 evidence, where a witness can testify to
8 what he's learned through the use of his
9 five senses; like for example, "I heard
10 the gunshot and it was loud," or "I
11 smelled the smoke and it was acrid," or
12 "I touched the body and it was cold."
13 There's another type of evidence that
14 comes in that is just as good as direct
15 evidence, and this is what we call
16 circumstantial evidence. It is sort of
17 round about evidence where you can be
18 presented with a fact or series of facts,
19 and then you draw a logical -- logical
20 deduction to another fact or series of
21 facts. For example, let's say you go to
22 sleep at night and you look out across

1 the neighborhood from your second story
2 window in your bedroom and the night is
3 clear. The moon is beaming, it is
4 shining. The stars are twinkling. Not a
5 cloud in the sky. You have got the T.V.
6 on before you go to sleep and the weather
7 forecast predicts a storm overnight.
8 Cold front is moving in. And you draw
9 the blinds and you go to sleep and
10 sometime in the middle of the night, you
11 are awakened by a distant booming sound
12 that comes closer, and then there's a big
13 crash above the house, and just before
14 this big boom, there's a real bright
15 flash of light from outside. Now, the
16 blinds are drawn and you can't see what
17 is going on out there, but you hear
18 pitter patter on the roof and then a
19 heavy boom and you fall back to sleep.
20 You get up, you open up the blinds, the
21 sun is shining, not a cloud in the sky,
22 and there's water all over, the streets

1 are running with water, drops of water
2 are dripping off the leaves of the trees
3 as far as you can see across the
4 neighborhood. There's no fire plug
5 nearby where a car could have hit it
6 during the night and spurted water up,
7 and you know, using your reason and
8 common sense what happened during the
9 night, don't you?

10 A. Right.

11 Q. There's a rain storm, thunder storm, you saw
12 the flash of lightning, you heard the
13 thunder, and you know that beyond any
14 reasonable doubt; don't you?

15 A. Right.

16 Q. And you learned that by circumstantial
17 evidence, didn't you?

18 A. Well, yes. I guess you could say so.

19 Q. You didn't see it, but using all of those
20 other factors, you found out what
21 happened?

22 A. Right.

1 Q. Now, there's room in there for some possible
2 doubt, some imaginary doubt. You can
3 imagine that Martians fly by in their
4 space ship and flew by and put on a light
5 show. That would be a foolish or
6 imaginary doubt?

7 A. Yes.

8 Q. You know beyond a reasonable doubt is all that
9 happened was a rain storm. That is the
10 same type of stuff that you can consider
11 in a criminal case. And they use that
12 term circumstantial evidence. Sometimes
13 people use it rather disparagingly, but
14 that is very good evidence. And there's
15 a reason for it. I think you would agree
16 that often times serious crimes happen in
17 secret?

18 A. They try to.

19 Q. Sometimes criminals aren't the brightest
20 rocket scientist?

21 A. You have a better chance of getting caught.

22 Q. Because of the fact that crimes are often

1 crimes committed in secret and maybe
2 secret planning, we have to rely on other
3 types of evidence, unless the Defendant
4 tells you exactly what they were planning
5 at the time. And you can rely on things
6 like, may be like letters or phone calls,
7 if we have those things, to determine
8 what a person was planning; is that
9 right?

10 A. I would guess, yes.

11 Q. Now, you would agree that criminals aren't
12 always the brightest people in covering
13 up their tracks. For example, you are
14 aware of cases you might have read in the
15 paper where bank robbers have gone into a
16 bank with a holdup note handing it to the
17 teller, and taken the money and left.
18 And sometimes, they are captured on
19 camera and they are not wearing a mask,
20 and sometimes that note that they have
21 written is on the back of an envelope
22 that's addressed to them and they have

1 left that at the scene.

2 A. I have heard of that.

3 Q. Or burglars leaving their wallets at the scene
4 of the crime?

5 A. I have heard that.

6 Q. You are aware that sometimes criminals aren't
7 the brightest people in the world?

8 A. I would say, yes, some. Some are really good.

9 Q. Some are good and some aren't so good, are
10 they? Now, another thing, this crime
11 happened in this County and up in
12 Howland, and you understand that you are
13 not allowed unless you are conducted to
14 the scene by, on a view by the bailiff,
15 you are not allowed to go out to the area
16 to investigate yourself.

17 A. I have no idea where it is at. I wouldn't
18 want to do it anyway.

19 Q. You are not allowed to, because you understand
20 that could cause a mistrial. We had one
21 case where a juror went out and did his
22 own investigation. Sometimes I think

1 there are one or two movies where they do
2 that. That is movies and T.V., but it
3 caused a mistrial. You understand that
4 we don't want to do something all over
5 again, that would be improper to do
6 something like that?

7 A. Yes. Sometimes you want to ask a question,
8 but you wish somebody would ask the
9 question, but you can't say, "Hey, how
10 about asking this?"

11 Q. And that is another thing. You understand
12 that under our justice system in this
13 state, you are not allowed to ask the
14 questions, you are stuck with the
15 questions that the lawyers ask, and
16 because we're lawyers, we're probably
17 going to confine ourselves to facts that
18 prove the elements of the crimes charged.
19 That is all we have got to prove under
20 the law, just those particular elements
21 that the Judge is going to instruct you
22 of later on. And because of that, there

1 may be things of which you may have some
2 special interest. You may wonder what
3 they were cooking on a certain day. Or
4 where they got their degrees from and
5 because it may not be relevant to proving
6 the elements of the crimes charged, we
7 may never get into that. You will never
8 know what the answer is to those
9 questions that you may have, but if it
10 had nothing to do with proving the
11 Defendant's guilt or non-guilt on these
12 elements of the crimes charged, you
13 understand you could still return a
14 guilty verdict, even though there may be
15 some unanswered questions about some
16 unrelated factors?

17 A. Yes, I understand, but the unrelated factors
18 doesn't mean nothing to me. I don't care
19 what they were cooking as far as what
20 they had for dinner that day is
21 immaterial to me.

22 Q. The key thing is, are we able to prove the

1 elements of the crime by proof beyond a
2 reasonable doubt in the first phase? The
3 fact that the Defendant is a woman, does
4 that bother you in any way if you are
5 called upon to return a guilty verdict in
6 the first phase or death penalty verdict
7 in the second phase?

8 A. Maybe years ago, but in the last 20 years
9 where things have changed, compared --
10 well, woman are more equal to men now.
11 Even in the war, they are over in the war
12 and everything else, so they are more
13 equal as far as everything.

14 Q. Than what they used to be years ago?

15 A. Yes.

16 Q. Another thing we were getting into before, you
17 understand that you are not allowed to
18 take notes during the course of the
19 trial. You might like to, but under our
20 system of justice, you are going to have
21 to remember the testimony and it is like
22 when we were kids, you listen to the

1 radio, pay close attention, and you are
2 able to remember things. Then at school,
3 they let you take notes, generally, but
4 here you don't take notes. They want you
5 to pay close attention to the witnesses
6 to watch their demeanor, determine their
7 truthfulness, their credibility. The
8 Judge will give you an instruction on
9 that and it's the same test that you use
10 in your every day life.

11 And you are going to have to rely on
12 your recollection along with the
13 collective recollection of the other 11
14 jurors who are on the Jury with you. And
15 when you go back to deliberate, often
16 times jurors come in with the question,
17 "Well, can we get the testimony of so and
18 so?" That is not going to happen,
19 because Mary Ann is very good as a Court
20 reporter, but she can't do instant
21 transcripts. We don't have millions of
22 dollars to spend on special transcribing

1 facilities that they had in the O.J.
2 Simpson case or whatever those cases, the
3 high publicity cases are in California,
4 or elsewhere.

5 So, the Judge will probably tell you
6 that you have got to rely on your
7 collective recollection and you are not
8 going to get the transcripts of the
9 testimony. So it is very important you
10 pay close attention to all of the
11 testimony.

12 Now this case is probably going to
13 take somewhere, once we get into trial,
14 it could take up to two weeks to try, I
15 would expect. Maybe a little bit less,
16 could take more, but about that period of
17 time and then at the end of the first
18 phase when you go out to deliberate at
19 that point, you are sequestered, it means
20 you are not allowed to talk to anybody
21 else, just the other jurors when you are
22 deliberating. You can talk about other

1 things other than the case when you are
2 not deliberating, but you can't -- the
3 only time you are allowed to talk about
4 the case is when all of you are together,
5 all 12 of you, and you are in
6 deliberations.

7 A. Not just like two people?

8 Q. Two people, that would cause a mistrial.

9 Don't want that to happen. It is
10 important that you don't engage in any
11 conversations about the case from now on
12 until you reach a verdict. And that
13 would cover both phases. And let's say
14 we -- go, you would be sequestered at the
15 end of the first phase until you reach a
16 verdict and we have had jurors go from a
17 couple of hours to a couple of days.
18 Every Jury is different. You take as
19 long as you need.

20 Now let's say you returned a verdict
21 of aggravated murder with a specification
22 at the end of the first phase. You go

1 onto a second phase, you would be home in
2 between, and then within a couple of days
3 or a week, generally we would be back for
4 a second phase, and you may hear a couple
5 of days of testimony, and then you would
6 be sequestered again at the end of the
7 second phase. And that again, with that
8 sequestration, who knows how long that
9 could take. Again, it could be anywhere
10 from a couple of hours to a couple of
11 days depending on the Jury, and you would
12 take as long as you need. Would that
13 cause any undue hardship for you?

14 A. No. It wouldn't be fun, but I could do that,
15 to go along with it.

16 Q. And you understand that this Jury, or our Jury
17 system here, there's certain obligations
18 that we have as citizens in this country,
19 the right to make sure the country works.
20 One of these obligations is if it is
21 election time we vote, if we can, to
22 participate in our Government. If it is

1 War time, we serve in the military. We
2 have got young people overseas right now
3 in several countries serving. And
4 another obligation of citizenship is to
5 serve as jurors if we're summoned in if
6 we're able to, and it is really important
7 to make sure the system works. Would you
8 be willing to undertake that obligation
9 of citizenship?

10 A. Yes, I have to.

11 Q. It may not be an easy thing to do?

12 A. I would say I prefer not to, but I would if I
13 have to.

14 Q. It is not an easy thing to sit on a death
15 penalty case. And the death penalty is
16 not an every day punishment. It should
17 be applied only in the most serious of
18 cases. And that's why we're here, for a
19 Jury to determine what the -- whether the
20 Defendant is guilty and if she is, then
21 what the appropriate punishment would be.

22 Now, I am almost done. Now during

1 the course of the trial, you are going to
2 be face to face with the Defendant and
3 perhaps during the course of the trial as
4 her chair is turned towards you, you are
5 going to become more acquainted with her,
6 and my question to you is this. When you
7 go back inside that Jury room to
8 deliberate with the rest of the jurors,
9 can you set aside all thoughts of
10 sympathy that you may have for this
11 Defendant and be conscientious in your
12 deliberations and base your verdict on
13 the testimony and evidence that you hear
14 and the instructions of law given to you
15 by the Court, and lay aside all thoughts
16 of sympathy that you have for this
17 Defendant?

18 A. Yes.

19 Q. Is there any other pressing matter at home or
20 work that would affect your ability to
21 concentrate on the evidence here?

22 A. I am retired. I have no excuses.

1 Q. There are days I wish I were, too.

2 MR. BAILEY: Thank you very much for
3 your candid answer. Now Defense counsel will have
4 an opportunity to ask you questions.

5 EXAMINATION BY MR. JUHASZ OF MR. CALHOUN:

6 Q. Mr. Calhoun, good morning. The Judge had us
7 introduce ourselves the other day. My
8 name is John Juhasz. My friend Jerry
9 Ingram and I are representing Donna
10 Roberts, who as you know, is on trial for
11 her life. Many times we say to jurors at
12 this point of questioning that this is
13 sort of like a job interview. I want to
14 change that a little bit, and hopefully
15 convey to you the reason why we do this,
16 and maybe it will help you understand why
17 we ask some of the questions that we do
18 and also help you in answering those
19 questions. I like to tell stories about
20 my son Mike. He's a senior in high
21 school now. When he was a younger kid,
22 he played baseball, T-ball and all of

1 that stuff and Little League, and I
2 coached, and sometimes we would find
3 ourselves at a game and the umpires
4 wouldn't show up, and so, they would ask
5 one of the parents if they would umpire.
6 And sometimes if we had an extra coach,
7 one of the coaches would umpire. Now,
8 the reason I bring that up is because if
9 you are selected as a juror in a case
10 like this, you are an umpire of what the
11 facts are. So, one of the reasons that
12 we ask these questions is that if
13 somebody would come up to me in one of
14 those games where they don't have an
15 umpire and say, "Do you want to umpire?"
16 I would say to myself, "What the heck,
17 I'm a fair guy, yes, I can do this." But
18 let's fast forward for a second. Let's
19 go to the end of the game. The score is
20 tied, my son Mike is on second base.
21 There's two outs, it's the bottom of the
22 ninth inning. There's a hit to the

1 outfield. Mike comes, I don't want to
2 say charge, because he's a big kid,
3 lumbering down second base to third base.
4 He gets the sign to go home, there's a
5 throw from the outfield, there's a play
6 at the plate, and there I'm having to
7 make the call. And if I call him safe,
8 the home team wins three to two and they
9 all run off happy. And if I call him
10 out, we go into extra innings and who
11 knows what the heck is going to happen.
12 The reason I bring up that story is
13 because we try in the beginning of a case
14 like this to think about everything that
15 could happen including that play at the
16 plate with two outs and the score tied
17 and the bottom of the ninth. In those
18 circumstances, maybe I should have said
19 to myself, or maybe they should have
20 asked me some more questions like, "Hey,
21 do you really think that you can do this?
22 After all, your kid is one of the players

1 on this team." Am I making sense about
2 all of that?

3 A. Yes, I have been through it.

4 Q. I suppose if we look back and think about it
5 from the perspective of the play at the
6 plate, maybe both of the parents on both
7 of the teams should have maybe asked me
8 some questions to find out if, really
9 even though I am a fair guy, if I am the
10 guy to do that job in this particular
11 situation; you see how that works?

12 A. Sure.

13 Q. We're sort of doing the same thing here. Now,
14 by asking you questions is saying, you
15 are not a fair person, or anything like
16 that. In that particular case I told you
17 about with my son, because of my personal
18 experiences, he's my son, I love him very
19 much, he's very special to me, maybe I
20 should umpire some other game, but not
21 one where Mike is a player. And we kind
22 of do the same thing here. We ask

1 questions to get a look at you, like the
2 job interview, but also to sort of ask
3 you to look inside yourself, and say, "Is
4 this a game I should be umpiring, or is
5 there something about the way I think or
6 the way I have feel, or my past
7 experiences, that maybe I shouldn't
8 umpire this game?" You okay with all of
9 that?

10 A. Fine.

11 Q. This case, I'm sure you have gathered is not
12 about Nate Jackson. It is about Donna
13 Roberts. You appreciate that?

14 A. Right.

15 Q. And basically, Donna and the victim in this
16 case, Robert Fingerhut, were married.
17 They got divorced but after they got
18 divorced they continued to live together.
19 They lived together up in Howland and
20 they worked together at the Youngstown
21 and the Warren Greyhound bus stations.
22 You have already read some things about

1 what has happened with Mr. Jackson,
2 correct?

3 A. Yes.

4 Q. And in fact, I think you said on your
5 questionnaire that you actually know what
6 was the ultimate outcome of his case?

7 A. Yes.

8 Q. Now, when you heard the name Donna Roberts the
9 other day, when you were first called for
10 Jury service, that name I take it wasn't
11 new to you at that point?

12 A. No.

13 Q. You knew about that from what you picked up in
14 the paper about Mr. Jackson?

15 A. Down here you asked me who is Donna Roberts, I
16 know. If you asked me at the grocery
17 store, I wouldn't have known. "Do you
18 know Donna Roberts? No, I don't." But
19 here, yes.

20 Q. Once you put it in that setting --

21 A. Right.

22 Q. And don't let me put words in your mouth. I

1 just want to make this sort of move so
2 we're not here forever, but don't let me
3 rush by you and put words in your mouth.
4 I'm going to guess from that, that when
5 you heard the name Donna Roberts in the
6 confines or the context of this
7 Courthouse, it sort of brought back what
8 you read about Mr. Jackson and about
9 allegations against Donna; is that fair
10 to say?

11 A. Yes.

12 Q. Tell me if you can recall, what your
13 impressions were back then when you read
14 those things. What did you think about
15 Mr. Jackson? What did you think about
16 Donna Roberts when you read those
17 articles?

18 A. Negative.

19 Q. You have also mentioned a little bit about
20 your thoughts on the death penalty and
21 for a second, I'm going to blend the two
22 because one of your concerns seems to be

1 that somebody who thinks about a murder
2 beforehand --

3 A. That is not the only thing. On the
4 questionnaire, it was like what was the
5 main thing. Well, I also think I put
6 down killing for money.

7 Q. You did?

8 A. And I don't think -- there's probably other
9 ones, too, but I don't think you should
10 go around killing people anyhow, but
11 those were the top of the list.

12 Q. Well, here's the reason I bring it up, and it
13 wasn't to take issue with you, it is
14 because I want to try to focus on what
15 may come out in this case. You heard
16 Mr. Bailey tell you that Donna is charged
17 two separate ways with aggravated murder?

18 A. Right.

19 Q. One of those is as he told you, what lawyers
20 call prior calculation and design. What
21 we used to have is a law that called it
22 premeditation, but they changed that a

1 while back and now they call it prior
2 calculation and design, but in essence,
3 it means making some sort of a decision
4 beforehand to commit the murder.

5 A. Right.

6 Q. Now, having said all of that, first of all,
7 when you read those articles before and
8 you said you had negative impressions,
9 did any of those negative impressions
10 have to do with this idea, that there was
11 some, either, any of the things you
12 mentioned in the questionnaire, that it
13 was planned or that it was done for
14 money?

15 A. I didn't know why it was done. When it first
16 come out, I didn't think it said why it
17 was done, that he was murdered and then
18 his wife was -- I didn't know they were
19 divorced and lived together. I didn't
20 know that. I didn't know they worked at
21 the bus stations or whatever. I didn't
22 know that. I just knew basically that

1 some woman and another guy killed her
2 husband for insurance money. Later on,
3 as the papers went through it, but I
4 can't say I followed that to the letter
5 of everything they put in the paper. I
6 don't know a lot of things about this.

7 Q. Understood, and this is not so much designed
8 to be a quiz about what you know or what
9 you don't know what was in the paper as
10 what impression the things that you did
11 read that you recall. And I want to
12 follow up for a second, you said that you
13 had negative impressions about
14 Mr. Jackson and about Donna Roberts.
15 Could you elaborate on that? I want you
16 to tell me.

17 A. It just irks me when people do something like
18 that. It just don't make sense to me,
19 because to me, I think 90 percent of the
20 people get caught that try it and they
21 have to know they are going to get
22 caught, or I would assume, I would expect

1 to get caught if I tried to do it. I
2 just can't understand why they would do
3 something like that, knowingly that they
4 are more than likely going to get caught.

5 Q. All right. Did you have a perception then
6 from those articles that these folks had
7 in fact done that?

8 A. Sure, I think that is the way the article sort
9 of went. That is the impression you get
10 from reading the paper.

11 Q. How about today? Do you still have that
12 impression today?

13 A. I can't say, because I have to clean that off
14 I feel, because one time I had an
15 instance where I had a card game and I
16 went to bed. It was all friends that
17 were playing cards, and I said, "I am so
18 tired, I can't play any longer." I put
19 my money on the dining room table and I
20 let the guys just play out in the
21 kitchen. Next morning I got up, all of
22 my money was gone. In my mind, I went

1 through circumstantial evidence and so
2 forth and I had decided who the person
3 was that took my money, and I was wrong.
4 And after I found out I was wrong, it is
5 harder for me to say that that person did
6 it right off the bat.

7 Q. I'm going to do something I normally don't do
8 when I stand up here and do this, which
9 is jump ahead a little bit and I hope
10 that I can tie some of these things
11 together. Mr. Bailey talked to you
12 earlier about the presumption of
13 innocence and I think you read some
14 things about that, correct?

15 A. I can't remember reading anything about the
16 innocence. Are you talking about in the
17 instructions?

18 Q. What you were given by the Court.

19 A. Yes.

20 Q. You heard Mr. Bailey talk about that is how
21 our system is set up.

22 A. Right.

1 Q. Everybody, it has been my experience in doing
2 this for a little while now, comes to
3 Courts like this wanting to do a good
4 job. The jurors want to do a good job,
5 they want to be fair, and it is my
6 impression anyway, everybody else may
7 disagree with me, that they want some
8 guidance, they want some help. They want
9 a formula, how the heck do we figure out
10 what proof beyond a reasonable doubt --
11 how the heck do we figure out that the
12 State proved their case beyond a
13 reasonable doubt? And I'm probably going
14 to disappoint a little bit when I tell
15 you that if you are selected as a juror,
16 at the end of the case when Judge Stuard
17 gives the instructions, he's not going to
18 give you numbers. That is not his fault.
19 He didn't write the law. He just gives
20 you the law as it exists, but he's not
21 going to say for example, well, if the
22 State has 12 witnesses, you have to find

1 that they proved this case beyond a
2 reasonable doubt, but if they only have
3 ten, they didn't meet the burden. It
4 doesn't work that way. There's no
5 formula.

6 Now, one of the ways that I like to
7 think about this and I talk to jurors
8 about this hoping that it helps them
9 think about it, is you somehow have to
10 try to in essence quantify the
11 unquantifiable. What I would mean by
12 that is, nobody gives a formula, but
13 somehow the Judge goes, "You guys go back
14 in the Jury room and figure out what the
15 State proved this beyond a reasonable
16 doubt." So, the concept I came up with
17 is you go back there and you sort of in
18 your mind's eye, draw a box. And some
19 somewhere on that box, put a line that
20 you call reasonable doubt. You then take
21 the evidence and you sort of close your
22 eyes in your mind's eye, you pour all of

1 the evidence that the State gave you into
2 that box. If they fill up in your
3 estimation, that box beyond that line,
4 because the proof has got to be beyond a
5 reasonable doubt, then they have proved
6 their case. But if they haven't, if they
7 either didn't put any evidence into the
8 box in your mind's eye, or if they put
9 some in there, but it doesn't get past
10 that line, then they didn't make their
11 case.

12 It is a little bit different from
13 what we're normally accustomed to, which
14 is where we want to hear both sides of
15 the story, because see the way our system
16 is set up, the State either wins the case
17 or loses it. In essence, the only thing
18 Donna Roberts has to do is show up here,
19 because the law says if you are going to
20 have a trial, you have to be here, but
21 you don't have to do anything, Miss
22 Roberts, because you don't pour any

1 evidence into the box yourself, and you
2 don't take any out as the accused person.
3 The State either wins their case by
4 filling the box up with enough evidence
5 beyond that line or they lose the case,
6 because they don't fill the box up beyond
7 that line. Does all of that make sense
8 to you?

9 A. Sure.

10 Q. And so to sort of tie that up with the idea of
11 the presumption of innocence, a Defendant
12 is presumed innocent. And what that
13 means is when we start out this case
14 right now, that box is empty, because you
15 haven't heard any evidence. All of this
16 making sense to you so far?

17 A. Sure.

18 Q. Now, what I need to know, and you are the only
19 person who can answer this is because of
20 what you have read or heard, about either
21 Donna Roberts or Nate Jackson or both of
22 them, is there anything in that box right

1 now? In other words, is it going to take
2 some evidence to sort of unconvince you,
3 that she and Mr. Jackson did this thing?

4 A. When I was home by myself where it didn't
5 matter, then I had an opinion. Now the
6 box is already empty.

7 Q. What is it that makes the difference between
8 home and here?

9 A. Because it doesn't matter what I think at
10 home. Here it does. I'm saying not
11 being a juror, with just a person at home
12 that reads the paper, and when you bring
13 most of the people down here read that
14 paper, and you put them here, then they
15 got to change -- not necessarily change,
16 but what they read in the paper, they
17 have to say, "Well, I got to be more
18 honest or more fair and not just take the
19 one side." That is all I can say.

20 Q. One of the other things I mentioned when I
21 first got up here that one of the jobs
22 that you have to do if you are picked as

1 a juror, is be sort of an umpire of the
2 facts. You have to decide what the facts
3 are in this case. The Judge does not do
4 that. He only tells you what the law is,
5 so that you can apply the law to the
6 facts. You okay with all of that?

7 A. Yes.

8 Q. For example, I think you told Mr. Bailey, like
9 most people, you don't know what the
10 definition of aggravated burglary or
11 aggravated robbery is.

12 A. To me, you say I have been robbed.

13 Q. And that is really honestly, that is what
14 everybody does who is not a lawyer. And
15 so the Judge would define for you,
16 "Listen, here's the definition of
17 aggravated burglary. Here is the
18 definition of aggravated robbery." Your
19 job is then to go back in the Jury room
20 and say, "Well, he told us what it is,
21 now we have to decide what facts are
22 there." Are there enough facts to meet

1 that definition and fill up that box I
2 have been talking about? When you do
3 that, when you decide whether that case
4 has been proven, how much evidence there
5 is, part of what you have to do is decide
6 whether you believe the witnesses or not,
7 what we call judging their credibility.
8 Are you comfortable doing that in this
9 case?

10 A. Yes.

11 Q. You don't think that just because somebody
12 tells us, takes an oath to tell the
13 truth, that everything they say is going
14 to be the truth?

15 A. No.

16 Q. You have learned over the course of your life,
17 how to figure out whether somebody is
18 telling you the truth and how they
19 haven't, right? It could be by their
20 demeanor. It could be by circumstantial
21 evidence, what they say versus what you
22 know other facts to be; all sorts of

1 tests, correct?

2 A. Yes, but I have been fooled, too.

3 Q. We all have. The only point of me bringing
4 that up is the Judge will tell you,
5 basically, that although he's going to
6 list some of them for you, you are
7 basically going to find out that the test
8 that you use to decide whether somebody
9 is telling you the truth or not, are the
10 same tests you use in your ordinary life.
11 Okay?

12 A. Yes.

13 Q. Now, here's why I bring that up in connection
14 with what we were talking about, about
15 the newspaper articles before. You have
16 read some things and you have said,
17 "Look, I read those as Joe Citizen,
18 reading the newspaper, now, I am Joe
19 Juror and I have to put that stuff aside,
20 I have to empty that box." What I need
21 to find out from you, Mr. Calhoun, is if
22 you hear testimony in the Courtroom that

1 matches what you read in the newspaper,
2 are you going to sort of give up that
3 function of deciding whether or not to
4 believe that witness by saying, "Well,
5 you know what, I have got to believe this
6 guy, because that matches what I read in
7 the newspaper"?

8 A. I don't know. I don't know precise things.

9 Matter of fact, I don't know if he shot
10 him with a rifle or pistol. There's a
11 lot of things I don't know.

12 Q. And some of them honestly may come back to

13 you, because just like you had said
14 before, if I saw you in Giant Eagle and
15 said, "Mr. Calhoun, who is Donna
16 Roberts?" You would say, "No idea." If
17 I bring you down to the Courthouse and I
18 say, "Who is Donna Roberts?" You would
19 say, "Oh yeah, that's the thing with Nate
20 Jackson." My point in bringing that up
21 is, as you go through the testimony,
22 because you have read some things, things

1 that you can't think about right now, may
2 pop back when you hear witnesses testify?

3 A. Yes.

4 Q. What I need to know and this is a question
5 only you can answer, because you have
6 read things, if a witness says something
7 and you go, "You know what, I didn't
8 remember that when I was talking to that
9 crazy John Juhasz, but now I remember I
10 read what that witness is saying in the
11 newspaper, it has got to be true." You
12 see, that is sort of giving up your job
13 as deciding independently whether that
14 person is really telling you the truth.
15 I need to know if you think you could
16 separate those two.

17 A. I hope so. That is all I can say.

18 Q. We have talked to you a lot today about the
19 death penalty and your views on the death
20 penalty. And I'm going to ask you some
21 more questions about that, but before I
22 do, there's a concern that I want to

1 address with you, and that is do you have
2 any thoughts, either because we're doing
3 this right now, before you have heard any
4 evidence, or maybe even because of what
5 you read about Mr. Jackson's case, that
6 this woman is going -- we're going to
7 find her guilty and get to a second phase
8 and that is why they are talking to me
9 about the death penalty now?

10 A. I think you are doing it because they have got
11 to prepare the people for what is coming
12 if it happens. You can't have people
13 over here saying, "I don't understand
14 that." That is why I think it is being
15 done now, to make sure you know. I
16 didn't know it was two trials. I thought
17 there was one trial. You went and that
18 was it. I didn't know it was going to be
19 two phases of this at all.

20 Q. You are exactly right. That's the reason we
21 do it, just like my little story about
22 umpiring, because we try to think in

1 advance about everything that could
2 happen, but it doesn't mean that it is
3 going to happen.

4 A. Right. You have to be prepared.

5 Q. That is right. And so, my question is, do you
6 have any thoughts, because we're talking
7 about this now, that we're automatically
8 going to get to that second phase just
9 because we're talking about the death
10 penalty?

11 A. No. I think it is just part of the procedure.

12 Q. Now, you have talked about a couple of things
13 where you think that the death penalty is
14 appropriate. And before we get into this
15 discussion, please understand it is not
16 my purpose to engage you in a quarrel or
17 to get you to change your opinions about
18 anything. I just simply need to know
19 what your opinions are, and let's see how
20 those square with what has to happen in
21 this case. Fair enough?

22 A. Fair enough.

1 Q. Your view, I believe if I am stating this
2 correctly, is if -- and you mentioned two
3 things specifically on your
4 questionnaire, if somebody does this for
5 money or if they plan it, and they commit
6 that murder, they should get the death
7 penalty?

8 A. Not just those, but I feel those definitely
9 deserve capital punishment.

10 Q. Let's talk about -- let's not even talk about
11 this case. Let's just talk about an
12 imaginary case where the allegations are,
13 and you understand, I'm not trying to
14 mimic your views, but I want to focus on
15 a couple so we're not here all day.
16 Let's talk about the planning it, and
17 that it is done for profit. So let's say
18 that there's a case, and the State proves
19 to you at the first phase, that the
20 person or persons who did it, thought
21 about it in advance, planned it. And if
22 I am understanding your thinking about

1 this, had a chance to say, "Wait a
2 minute, this is crazy, I shouldn't be
3 doing this," but they went ahead and did
4 it anyway. That is really what kind of
5 irks you if I am reading you correctly?

6 A. You know, not that -- well, planning a murder,
7 is, I feel that you shouldn't be doing it
8 and I think if you do it, you deserve the
9 death penalty. But you can kill
10 somebody, you can walk into a 7-11 down
11 there and the guy doesn't give you the
12 money fast enough and you shoot him in
13 the head, you don't have anything against
14 that person, you are not thinking about
15 it. If you shoot that guy, you still
16 deserve the death penalty. But there's
17 other things, that you don't, and every
18 case is different. I don't know what
19 else to say about it.

20 Q. That is what we're trying to do is find out
21 your feelings about it. And actually,
22 the thing you just mentioned would be

1 another one of the ways that somebody
2 could get the death penalty in this
3 state, but just so that we're not here
4 all day, let's focus on those two where
5 it is done with a plan or somebody could
6 have backed out, and it is done for some
7 kind of profit.

8 A. Yes, profit.

9 Q. So, let's say that the State at this imaginary
10 case that I am making up, proves that to
11 you. They fill up that box beyond a
12 reasonable doubt, the first trial. They
13 prove to you that this person or persons
14 killed some unfortunate individual, that
15 they planned to do it, that they could
16 have stopped, and they did it for money
17 and they didn't stop, and they went ahead
18 and did it anyway. Is that person who
19 you found guilty, is the death penalty
20 going to have sort of a leg up when you
21 go into that second phase because of how
22 you feel about these things?

1 A. I would say so, yes.

2 Q. In that kind of a situation, is it going to be
3 sort of up to the person who committed
4 the murder, to talk you out of giving
5 them the death penalty?

6 A. I don't know. I don't think the person -- I
7 don't know. I don't know how to answer
8 that. You mean -- this is all looking
9 ahead, if she were convicted and give me
10 a break, I'll do life in prison. You
11 say, you know, I hate to be the guy, so I
12 don't know. But the way I feel right
13 now, if convicted of this crime, it would
14 be capital punishment. That is all I can
15 say unless there were some circumstances.
16 Everything has something, nothing cement
17 or whatever you call it. Nothing is the
18 same all the time. There's all
19 extenuating circumstances to things.

20 Q. But what I am sensing from you, is see, that
21 box that I talked about, of the first
22 phase?

1 A. We filled that box up.

2 Q. You filled that box up. That is right, and
3 part of filling that box up is that you
4 found that the person did it for profit,
5 and that they planned it, and they could
6 have stopped and they didn't.

7 A. Right.

8 Q. Now, there's a different box at the second
9 phase. And that box also has to be
10 filled up beyond a reasonable doubt.

11 A. That is the part I didn't understand before
12 this happened here. I didn't realize
13 what was -- I thought it was all one
14 trial, but it isn't. So I would have no
15 idea what I am even in for as far as what
16 would be presented. To say, well, I'm
17 not going to do this or not going to go
18 with the original -- well, like I say, if
19 you kill somebody for premeditated or for
20 profit, then you deserve the death
21 penalty. But on the second part of the
22 trial, if there's something in there that

1 would say, you know, I don't want to go
2 that far, it could happen. But as I feel
3 right now, if she was convicted of what
4 she's accused of, then I would have to go
5 death penalty. I don't know what to say
6 anything different.

7 Q. I appreciate your answer and I want to make
8 sure that I understand then. Because of
9 how you feel and it is okay how you feel,
10 I'm not here to quarrel with that, it
11 sounds to me like when you start that
12 second phase, because of how you feel,
13 there's already some stuff in this box to
14 say, give her the death penalty?

15 A. It probably is. I would say right now, but I
16 don't know what is down in the future.
17 Somebody may change my mind, but the way
18 I feel about you do the crime, you do the
19 time.

20 Q. In those circumstances we have been talking
21 about, whether it is this case or that
22 case that I am making up where it is the

1 same allegations that it is for profit,
2 it is planned. Tell me if you can, your
3 thoughts about life imprisonment as an
4 alternative to the death penalty in a
5 situation like that, or are your views so
6 strong --

7 A. Life imprisonment would have to be one of the
8 worst things, because if I am a juror and
9 I have to go over to the Park Hotel for a
10 week and I'm not going to have a T.V., I
11 have never been in prison, but I'm not
12 going to be able to listen to the T.V.,
13 the radio, no newspaper and I'm going to
14 sit there, I am like sentenced myself.
15 That is how I feel. I don't want to
16 spend a week over there. And to do life
17 in a little room, I couldn't do it.

18 Q. So you see that as a substantial penalty?

19 A. I think it is very bad, but I'm not saying it
20 is bad. It is bad for the person that
21 gets it, but it is justified at times,
22 too.

1 Q. But having said all of that, does it change
2 what you said to me before, if it is that
3 kind of murder that we talked about,
4 where it is planned and for profit, that
5 the death penalty sort of has a leg up in
6 your mind?

7 A. The death penalty still has a leg up.

8 Q. A lot of times what people will say to you is,
9 "Well, listen, but can you follow the
10 law." And everybody wants to go, "Well,
11 yes, Judge Stuard is a nice guy, he's a
12 judge and I want to do the right thing.
13 I'm not going to thumb my nose at him and
14 say I can't follow the law." Nobody is
15 suggesting that. What we're talking
16 about here is your feelings about these
17 particular types of homicides. And it
18 seems to me just from standing here
19 talking to you and watching you, that
20 those things really kind of irk you, and
21 that you feel that somebody should pay
22 with their life for that type of a crime?

1 A. Right, that's the worst thing you can do.

2 Q. You also mentioned in your questionnaire I
3 think it was something about the death
4 penalty, why do we have the death penalty
5 or something and I think you put
6 "justice"?

7 A. Justice for the person who has been killed or
8 whatever. That is what I meant by that.
9 I don't mean that the State deserves it.
10 The person that has been wronged, they
11 could never be given their life back, but
12 at least this is like the way I
13 understand justice. I don't believe in
14 an eye for an eye, but some things I do.

15 Q. Some things you do?

16 A. Yes.

17 Q. And these types of things we have been talking
18 about here this morning that seem to irk
19 you and correct me if I am wrong, but I'm
20 judging from your demeanor, those seem to
21 really get to you?

22 A. Yes.

1 Q. Those are more eye for an eye things than some
2 other offenses, not saying it is the
3 exclusive list?

4 A. I say if you do the crime, you do the time.

5 If you go out and rob a bank, then they
6 are not going to put you on death row for
7 that. If you get ten years for robbing
8 banks, you get ten years. Whatever the
9 penalty is, if you do that, you should be
10 willing to pay the penalty, and I don't
11 say, "Well, I'm going to give this guy 20
12 years for robbing a bank or for murder."

13 It is what the law says. The law says
14 that you do this, then we give you 20
15 years. But really, I would rather not
16 even be in that part of the phase. I
17 would say, okay, guilty or not guilty,
18 but I don't know if I am qualified to
19 pick a sentence for a person, for me to
20 be the final Judge, to say, "Okay, death
21 sentence." And now I understand that the
22 Judge can also say, "No, we're not going

1 to do that," that we're going to go life
2 imprisonment over what we say. And I
3 kind of feel that is the way I would
4 prefer it was to begin with, that the
5 Judge, they take care of the sentence
6 more than myself.

7 Q. This is a case, however, where this type of a
8 case, a capital case in Ohio, is the type
9 of a case -- it is the only case, where
10 the Jury votes on the sentence.

11 A. Is that right?

12 Q. Yes. I understand your discomfort about that,
13 but what I am sensing from you still, is
14 that even though you would rather not be
15 doing this, even though you would rather
16 have the Judge do it, if it is your
17 decision to make and if the Judge tells
18 you it's your decision to make and he
19 says, "You weigh these things." The fact
20 that it is a premeditated murder with a
21 profit motive, is going to make you favor
22 the death penalty?

1 A. Yes.

2 Q. Now, I mentioned to you before this box that
3 we have been talking about, and the
4 State, at the first phase, has to fill up
5 that box that we talked about, but to
6 sort of make life a little more
7 complicated, there are also little boxes
8 within the big box that lawyers call
9 elements. And they are just parts of the
10 crime. So that when the Judge -- when
11 you say like most jurors do, "I don't
12 know what aggravated robbery is. I don't
13 know what the legal definition is," or "I
14 don't know what the legal definition for
15 aggravated burglary is," when the Judge
16 tells you at the end of the case what
17 they are, those things are broken down
18 into what we call elements. The only
19 reason I talk to you about that for a
20 second is, those elements, each one of
21 them has to be proved by proof beyond a
22 reasonable doubt. And I brought that up

1 because you mentioned to Mr. Bailey and
2 you put in your questionnaire that one of
3 the -- I think the problems that you see
4 in our justice system is that there are
5 loopholes?

6 A. Like he said earlier, if I didn't say this was
7 done in Trumbull County, now, if those
8 particular words aren't said, then no
9 matter if a person is guilty or not
10 guilty, and it goes through the trial,
11 they are released because of something
12 like that, to me is a loophole that
13 doesn't make sense to me. I'm not saying
14 that they can't say, "Well, I don't want
15 to try to pick out evidence or anything,"
16 but I'm just saying that to me is not
17 justice for anybody.

18 Q. Let me talk to you about a silly example I
19 used with somebody yesterday. One of the
20 aggravating circumstances, not in this
21 case, but that we have in Ohio, because I
22 think now you understand that if a murder

1 is -- if an aggravated murder is
2 committed under certain special
3 circumstances, then that person can be
4 eligible for the death penalty. You are
5 okay with that now?

6 A. Yes. I'm going to say one thing. You have
7 say we filled the box up. Now if the box
8 isn't all the way filled, but I still
9 feel that that person is definitely in on
10 that, but how much in on the murder and
11 so forth, I would say the box is not all
12 the way full. Now do I go the full
13 penalty of the law or do I say, I have
14 got to go somewhere in between? What I'm
15 saying is if that box is full, it has got
16 to be full on the top for the penalty.
17 You know what I mean? It is not like
18 it's three-quarters. You say it has to
19 be over 50 percent or over such a
20 percent, the box, and it goes to 75
21 percent, it is hard for me to say, well,
22 I believe the 75 percent of this, but

1 now, I don't know if I am willing to say
2 death penalty on when I say 75 percent of
3 over the box being full, which when the
4 box is full there's no doubt it is 100
5 percent, and because he did say there's
6 some circumstantial evidence here. Now,
7 I don't know if I'm going to believe it
8 or if I'm not going to believe it.

9 Q. Let's jump ahead then to another thing that
10 goes along with this, and actually, it is
11 probably -- I probably misspeak when I
12 say fill the box up. And here's why.
13 Because when the Judge talks to you about
14 what reasonable doubt is, he's going to
15 tell you that it is doubt, it is proof
16 beyond all doubt based on reason and
17 common sense. It is not proof beyond all
18 possible doubt. It is not proof beyond a
19 shadow of a doubt. It is not proof
20 beyond imaginary doubt. I can't tell you
21 where to draw that line on the box. I
22 can just tell you that it is going to be

1 pretty far up there because this is the
2 highest standard of proof we have in our
3 law. But for you to come back with a
4 guilty verdict at the first phase, you
5 have to be convinced that the State
6 filled that box up beyond that line
7 called reasonable doubt. It is never
8 going to be 100 percent, because you
9 can't ever prove a case beyond a shadow
10 of a doubt, beyond possible doubt, beyond
11 imaginary doubt. But if when you are
12 looking at the evidence that the State
13 presents to you, when you make important
14 decisions in your life, some people do it
15 on a piece of paper and some people just
16 do it in their mind's eye. They make a
17 list of pros and cons. If you are going
18 to decide to change jobs, get married,
19 buy a house, how to fund your kids'
20 college, whatever it is, when you make an
21 important decision, you weigh the pros
22 and the cons, correct?

1 A. Right.

2 Q. You have to do the same thing here. On the
3 one side of the check list has to be all
4 of the reasons why the State says, "I
5 have proved to you, ladies and gentlemen,
6 that this woman is guilty beyond any
7 reasonable doubt." On the other side of
8 that list, have to be doubts. And let's
9 break them down for a second. First of
10 all, they could be doubts that you think
11 about yourself as you listen to the
12 evidence. They could be doubts that
13 other jurors mentioned to you in the Jury
14 room when you are talking about the
15 evidence. They could be doubts that
16 Mr. Ingram and I bring up when we talk to
17 you in final argument about the case and
18 why we think there are reasonable doubts,
19 why you should find reasonable doubts.
20 You have to sort of leave the pros side,
21 the one side of the board, go to the
22 other side and say, let me analyze these

1 doubts. Here's doubt number one. And
2 you talk about it with the other jurors
3 and you go, you know what, that doubt is
4 not reasonable. Let me throw that one
5 out. And the same thing with number two
6 and number three, if you end your
7 accounting for all of those doubts on
8 that side of the list and you say, sorry,
9 none of these doubts are based on reason
10 and common sense, then the State has
11 proved its case beyond the existence of
12 any reasonable doubt. If on the other
13 hand, you have one or more than one, if
14 you have one or more than one doubt, then
15 the State hasn't proved their case beyond
16 a reasonable doubt, they haven't filled
17 that box up past that line called
18 reasonable doubt. Do you see how that
19 works?

20 A. Right.

21 Q. If you get to a second phase, you have in
22 essence already at the first phase said,

1 look, I talked about all of those doubts
2 on the right hand side of the check list
3 that Mr. Juhasz was ranting and raving
4 about and guess what, none of them are
5 based on reason and common sense, so I
6 found her guilty. I don't know if that
7 helps you with that filling up the box
8 thing, but to get to the second phase,
9 you have already eliminated in your mind
10 all of those doubts and said, none of
11 them are based on reason and common
12 sense. Does that help or not help?

13 A. Not really a lot, I don't think.

14 Q. I get that a lot.

15 A. Being a juror isn't easy. And all I can say
16 is, I don't want to be a juror. I would
17 rather be home, but if I have to be, I'll
18 be as fair as I can. That is all I can
19 say. As far as if convicted, I'll have
20 to say, I am of the believer if you do
21 it, you have to pay for it. That is all
22 I can say.

1 Q. And that paying for it in the type of homicide
2 where it is planned --

3 A. Not just that. I mean there's more. The guy
4 that shoots the guy in the 7-11 deserves
5 it as much as somebody that thinks about
6 it. I just put those down as two things
7 that I felt deserved capital punishment.

8 Q. And again, I didn't mean to limit you by that,
9 so let's take and even take someone that
10 we haven't mentioned today. There are
11 certain things that if you find that
12 those exist and you find that person
13 guilty beyond a reasonable doubt of doing
14 that type of offense, when you go into
15 that second phase, the death penalty has
16 a leg up in your mind?

17 A. In my mind right now, yes. I would say yes.

18 Q. Even if the Judge says, "Look, that's not
19 supposed to happen." You are telling
20 me --

21 A. I don't put myself above the law. I have an
22 opinion right now, but if somebody else

1 tells me the law, well, I can't say, "I
2 don't care what the law says, this is
3 what I think." I have to go by the law,
4 too.

5 Q. And do you think you can do that?

6 A. I hope I can be fair, because like I said,
7 that card game incident, I was sure and I
8 was wrong. It made me think different
9 about what you think is true and what
10 isn't. So you have to really know, you
11 have to see the evidence before -- I
12 don't know anything. I know what I read
13 in the paper, which isn't much. But what
14 I know isn't good for the Defendant.
15 I'll say that, but you read the paper,
16 that is what you are going to get and you
17 never expect to be down here explaining
18 why you don't want to be here.

19 Q. Who would have thought?

20 A. Yes.

21 Q. Let's say that what you have read that you
22 find all of that to be true.

1 A. Like I said, I haven't read that much. I know
2 that she's accused of killing her
3 husband, and I just read the parts so and
4 so, killed her boyfriend, is in jail and
5 so forth, and they were corresponding and
6 he got out and did the murder. I know
7 that. If the facts of the case, where it
8 was done, I have no idea. What kind of
9 gun, I have no idea. There's a lot of
10 stuff that I have no idea and I'm sure it
11 has been in the paper, maybe they said it
12 was a rifle or gun of some sort, but I
13 don't know a lot.

14 Q. Mr. Calhoun, I appreciate you taking the time
15 and being patient with me for answering
16 my questions.

17 A. Well, I have no choice.

18 Q. I appreciate your honesty on that one, too.

19 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
20 OF HEARING)

21 EXAMINATION BY THE COURT OF MR. CALHOUN:

22 Q. Mr. Calhoun, I have to ask you one question

1 here. I have heard your answers to the
2 questions, so I have formed my opinion
3 about what type of fellow you are, and I
4 can be presumptuous to a degree, a part
5 of the way you think and are answering
6 the questions here. I am of the
7 impression that you feel that you can be
8 reasonable and fair, and that is the
9 primary thing they are looking for here.
10 You have kind of got -- I'm given the
11 impression and I want to be sure this is
12 right, because if it is the way you
13 absolutely feel, you are entitled to it.
14 You mentioned something about someone
15 takes a gun into a 7-11 and shoots
16 somebody, they deserve the death penalty.
17 They were robbed of money and there's no
18 excuse for that. That is your thing,
19 right?

20 A. That is, yes.

21 Q. I notice that you are a hunter and you own
22 firearms and probably may be aware, I am

1 very much aware of how people with that
2 background see the world. You understand
3 that the law says that even if you feel
4 that way, you can't impose that, just as
5 a blank check on any fact situation in
6 any murder case, because that isn't what
7 the law calls for. The law says no
8 matter what your personal feelings may
9 be, that if you are going to be able to
10 sit on a Jury of this nature, you have to
11 be able to truthfully say to yourself and
12 assure these folks this is what I
13 believe. But, I understand what the law
14 is, and the law, if I got to that second
15 phase, would require me to set aside that
16 black and white situation, and look at
17 the facts of this case. Let me say to
18 you, you have this strong opinion about
19 somebody takes a gun and goes into a 7-11
20 and robs somebody. We usually think of
21 some drug addict, and got some kind of
22 deficiency. I'm saying what you may

1 think, maybe me too, the lack of any
2 moral back bone, and no reason for that,
3 it is senseless. Poor innocent person
4 with the job got killed. What about if
5 you sat on a Jury and you found out that
6 that fellow has lost his job somewhere,
7 exhausted all possibilities, had a child
8 that had brain cancer, was going to die
9 and he had no money to help the child.
10 Now the crime is still a terrible crime.
11 But the question is, could you just in a
12 black and white situation say, I don't
13 care? Some people would. Some people
14 would find that there's never a
15 justification to do certain things. And
16 if that is the way you believe, I am the
17 first to tell you, you have the right to
18 that belief.

19 A. That is basically how I feel. I don't think
20 that because you have problems in your
21 life, doesn't give you the right to take
22 somebody else's life.

1 THE COURT: Fair enough. You have
2 answered my question very well. I'll allow either
3 side, if you wish to ask any other questions, but I
4 think he's made his point quite clear.

5 MR. BAILEY: Just have one or two
6 more questions.

7 CONTINUING EXAMINATION BY MR. BAILEY OF MR. CALHOUN:

8 Q. What it boils down is, you have that personal
9 belief that no matter what --

10 A. I'm not saying no matter what. No matter
11 what. If a person is proven to have done
12 a certain thing beyond a reasonable
13 doubt, I'm just saying if they are guilty
14 as sin, they have got to pay the penalty.
15 That is my opinion. That is all I can
16 say.

17 Q. You are entitled to your opinion. But, if the
18 Judge tells you that in this case, that
19 you find the Defendant guilty and we move
20 on to a second phase, can you with an
21 open mind, listen to whatever evidence is
22 produced at a second phase on behalf of

1 the Defendant and set aside your personal
2 opinion? And there may be things, we
3 don't know what, but, there may be
4 factors that could be presented that
5 would have some weight on a scale, that
6 would at least put it to balance, the
7 aggravating circumstance in your mind,
8 and the minds of the other jurors, so
9 that the death penalty would not be the
10 only penalty on that scale.

11 A. I can't say no, because I don't know what the
12 circumstances are. I don't know what it
13 would be there to change my opinion.
14 There could be something possibly there
15 that I would say, well, you know, but
16 maybe there isn't. I don't know. I
17 don't know what the thing is.

18 Q. If the Judge told you that you have to keep an
19 open mind at that point and consider it,
20 and would you then if evidence is
21 presented on behalf of a Defendant, would
22 you at least consider it?

1 A. If I have to go to that second phase, when I
2 go in there and I sit down, the box is
3 empty.

4 Q. So the box would be empty at the second phase
5 and the burden would be on us to prove
6 beyond a reasonable doubt --

7 A. The burden would be on you to say that she
8 deserved -- if this is the law. This
9 isn't my idea. The two trial type thing,
10 like I said, I didn't understand this
11 part of the thing, but now we have got
12 another phase that I wasn't aware of.
13 Now, there must be something to this,
14 because why bother with it. If you say
15 guilty, and then you deliberate and say
16 guilty -- I don't understand why, to say
17 you are going to do 20 years, get life,
18 do the death penalty. I really don't
19 think that is a good thing for jurors to
20 do. I have no choice. It is the law,
21 but I give you my opinion what I think he
22 should do if he's the Judge, and he's

1 supposed to -- I would say he should give
2 the death penalty for the crime that was
3 committed and proven in Court.

4 Q. If the Judge told you, let's say we go into a
5 second phase, can you start out with that
6 box being empty just like you did in the
7 first phase? If the Judge told you that
8 you are in the second phase, you try that
9 the way with the first one, with an open
10 mind? If factors are presented on behalf
11 of the Defendant, you have to balance
12 them against whatever the State presents,
13 these aggravated circumstances, could you
14 do that with an open mind, put aside your
15 personal opinion?

16 A. Sure. It is just like, right now, all I know
17 was negative. I have got to take all of
18 that and forget everything that I have
19 read or wait and judge by the evidence.
20 Or not judge, I guess it is judging
21 somebody. I have to decide whether they
22 are guilty or innocent and I have to do

1 it with an open mind and when it comes --
2 this is how I feel death penalties --
3 definitely should be a death penalty, in
4 my feeling, but then there are other
5 parts of the law that I have to go by the
6 law. It is an empty box and you start up
7 the thing.

8 Q. But the important thing is, so the death
9 penalty is not an automatic punishment?

10 A. Like I tried to say earlier, there's nothing
11 set in stone or I think I said concrete,
12 but I meant stone. There's nothing set
13 in stone where this is how I feel, and it
14 would take something to change my mind.

15 Q. Now your own opinion, your own opinion if I
16 understand, is the death penalty is a
17 proper punishment. You understand under
18 our system of law in this case, you have
19 to set this aside?

20 A. I know. I have to set everything aside. I
21 have to come in here completely blank.

22 Q. And that is what we need to have a fair juror?

1 A. All I can say, I tried to be as fair as I can,
2 but in all honesty, I would just prefer
3 not to be here and I could very easily
4 say, the death penalty, death penalty no
5 matter what, which I do believe in the
6 death penalty, but I could be swayed in
7 the other trial. I'll say that, too.

8 Q. It may well be that there are some factors
9 that come in that may bring into balance
10 the scale or outweigh the State's
11 evidence.

12 A. Like the Judge gave me the 7-11 deal where the
13 guy lost his job. That still doesn't
14 give a person the right to kill somebody.
15 I don't care how bad your luck is. When
16 you kill somebody, they are done. They
17 have nothing left.

18 Q. You may hear that somebody is mentally
19 deficient. That their I Q --

20 A. That's another thing. If a person is not
21 mentally competent.

22 Q. Let's say they are competent. That is another

1 standard under the law. Let's say that
2 you hear that the person has some mental
3 defects in such a way that you feel that
4 it has some weight on the scale, that
5 puts this into balance, that the person
6 has been horribly abused through his
7 whole life. Everything has gone wrong
8 for him, and there are things that here
9 in a second phase, I imagine there's some
10 things that you can imagine that might be
11 on the Defendant's side of the scale that
12 could bring the scale into balance as far
13 as a life sentence, right?

14 A. Possibly, yes. But like I say, I still say,
15 do the crime, you do the time, and I
16 basically -- that is my principles and
17 that is basically how I am. There could
18 be something here that would change my
19 mind, but I can't say there is and I
20 can't say there isn't.

21 Q. You may fill up that box.

22 A. I'm not trying to lie to anybody. I'm just

1 trying to tell you how I feel, and I'm
2 not trying to get out of doing my civic
3 duty or anything like that. I am telling
4 you how I feel. That is all I can do.

5 MR. BAILEY: Thank you.

6 MR. JUHASZ: We have no further
7 questions.

8 (SIDE BAR DISCUSSION OFF THE RECORD AND OUT
9 OF HEARING)

10 THE COURT: I'm going to grant the
11 motion. Mr. Calhoun, you and I would be better
12 off, if we were living in 1803.

13 MR. CALHOUN: Probably right.

14 THE COURT: Listen, you have been
15 most honest and we respect your view. Not
16 everybody in here would disagree with your view,
17 but I'm going to excuse you. Let me explain to you
18 why. You feel very strongly that anyone who
19 misuses a firearm or particularly a firearm, or
20 kill anybody --

21 MR. CALHOUN: Firearm is not the
22 thing at all. I think a firearm has nothing to do

1 with it as far as I'm concerned.

2 THE COURT: Taking another person's
3 life?

4 MR. CALHOUN: Taking another
5 person's life for no reason. If your daughter is
6 being raped and you go in and kill the guy, that is
7 justifiable homicide. If your girlfriend/boyfriend
8 is in there having sex and you kill him, that is
9 murder. And the same thing with the frying pan,
10 but different situation.

11 THE COURT: I respect that. I'm
12 excusing you. We thank you so much for your time.

13 MR. CALHOUN: It has been an
14 experience.

15 (Juror No. 18 excused from the Courtroom.)

16 THE COURT: Let's take a lunch
17 break. Be back at 1:45.

18 (Court in recess at 12:45 p.m.)

19 (Resumed in Open Court at 1:45 p.m.)

20 (Juror No. 19, Sheri Senek, entered the Courtroom.)

21 THE COURT: Good afternoon. You
22 read the handout that was given to you?

1 MS. SENEK: Yes, I have.

2 THE COURT: You have a pretty broad
3 idea of why we're going through this procedure.
4 This is an opportunity that both sides have to ask
5 you questions that are more individual, in a more
6 individual setting than what we went through the
7 other day. You understand that this case involves
8 two counts of aggravated murder with
9 specifications. Under Ohio law, just because a
10 person commits murder does not make them face the
11 death penalty. The legislature has designated
12 certain actions that puts a person in that
13 position. One example is if you kill a police
14 officer, that is a specification that can be
15 attached that could bring up the death penalty.
16 There are specifications attached to the
17 indictment, the counts of aggravated murder in this
18 case that raise the possibility of that occurring
19 in this case. The case will go forward at trial
20 like any ordinary trial, wherein the Jury is called
21 upon to determine one question and that is, is the
22 Defendant guilty or not guilty. If that Jury comes

1 to the decision that Miss Roberts is not guilty,
2 then that would be the end of the trial. If,
3 however, the State proves all of the elements of
4 those two charges beyond a reasonable doubt, and
5 proves the specifications to be true beyond a
6 reasonable doubt, and the Jury makes a finding of
7 guilty, then the matter will go to a second phase.
8 And at the second phase, there would be additional
9 evidence presented.

10 The State would present evidence
11 concerning what are known as aggravating
12 circumstances. Those are reasons that the State
13 would put to the Jury to convince them that the
14 proper decision here would be to impose the death
15 penalty. The Defendant would put forth mitigating
16 factors and those are reasons that the Defense puts
17 forward for the Jury to weigh against the
18 aggravating circumstances, and to decide that this
19 isn't a case where the death penalty should be
20 involved. Something lesser, by way of a life
21 sentence.

22 And the Jury has three different choices

1 on that, the lesser degree without chance of parole
2 and the others. Now some people in society believe
3 that whenever a human life is taken, that the
4 perpetrator of that wrong should lose their life,
5 an eye for an eye. That is not the law. As I
6 explained, only under certain circumstances can
7 that come up. There are other people who through
8 religious, moral, ethical considerations, can't
9 visualize themselves being placed in a situation
10 where they have to make such a serious decision.
11 That is fine. Everybody is entitled to their view
12 of life. But the law mandates that we pick a Jury
13 to try this matter under the law. Therefore, this
14 search is for 12 people to sit on that Jury no
15 matter what they may personally feel about the
16 issue of the death penalty, for people who are able
17 to analyze everything that are going to go through
18 there and decide in their own mind no matter what
19 my personal feelings are, I am comfortable that
20 I'll be able to sit and listen to the evidence and
21 determine the matter on the evidence and apply the
22 law, as given by the Court.

1 So that means that someone who may be
2 sitting on this Jury who isn't quite sure that they
3 like the idea of the death penalty, you know in the
4 broad context, they have to be able to sit and
5 apply the law in this case no matter where that
6 leads them. Some people are comfortable with that,
7 others are not.

8 So part of the inquiry here will be to
9 find out what your feelings are, whatever your
10 feelings are, we'll of course respect them. You
11 have the right to your own opinions, and it is an
12 issue that is in great controversy and the
13 attitudes run the whole gamut of opinions.

14 The second issue will be the matter of
15 any pre-trial publicity. We live in a small area,
16 most people who vote also read the newspapers.
17 Many of the people, I'm sure the vast majority of
18 the people in that room the other day have read
19 something about this case. That is only to be
20 expected. But the attorneys for both sides here
21 will be interested in knowing if you have read
22 something or you formed some opinion about the

1 facts of this case, that you are not able to set
2 aside, or at least that you are not able to allow
3 the evidence to prevail. Because in order to have
4 a fair trial, both sides here have to be assured
5 that all 12 jurors are going to have the ability to
6 decide this case on the evidence, and that evidence
7 doesn't exist unless it is presented in this
8 Courtroom.

9 A Jury who isn't quite sure that they
10 like the idea of the death penalty, you know in the
11 broad context, they have to be able to sit and
12 apply the law in this case, no matter where that
13 leads them.

14 Sheri, suffice it to say, both sides will
15 want to be satisfied if you are a person that is
16 not prejudiced in some way at this point. Some
17 people can read articles and pay very little
18 attention to them. There are few people that
19 believe everything they read in the newspaper and,
20 but most people don't. If a person is going to be
21 tried in the newspapers, you wouldn't have much of
22 a judicial system. And whenever the fairness of

1 any tribunal is called into question, then the
2 entire system has a problem. So you will get the
3 idea. This is what they are trying to find out,
4 primarily those two issues. No question will be
5 put to you that is intended to be embarrassing. If
6 it is, tell them, "I'm not going to answer that."

7 EXAMINATION BY MR. BECKER OF MS. SENEK:

8 Q. Miss Senek, my name is Chris Becker, I work at
9 the County Prosecutor's office and this
10 is Mr. Ken Bailey. He and I are both on
11 this case together. Mr. Juhasz and
12 Mr. Ingram are the Defense Attorneys in
13 this case and they represent Miss Donna
14 Roberts over here, and as the Judge sort
15 of gave you a little outline, we're
16 trying to pick 12 jurors for this case.
17 Twelve people really is what we want that
18 don't know anything about the case, or if
19 they do know something, they are not
20 going to let it influence what they hear,
21 because if you are picked for this Jury,
22 we're going to bring in witnesses that

1 are going to sit in that same seat that
2 you are seated at, and we're going to
3 present Exhibits to you, and we have to
4 prove the case beyond a reasonable doubt.
5 And it is not fair to Miss Roberts or to
6 any Defendant, if you have read about the
7 case or heard about the case, and come in
8 with your own idea about whether she's
9 guilty or innocent based upon what you
10 read in the newspaper or saw on
11 television, and I think I'm going to go
12 this way first, because I think you are
13 one of those people that has not heard
14 about this case, right?

15 A. That is correct.

16 Q. You don't have any idea what this case is
17 about? You never saw it on television
18 and I'm going to ask you maybe again, you
19 didn't hear about Nate Jackson or Donna
20 Roberts or any other case from Howland in
21 the last year or so?

22 A. No. If I did --

1 Q. You have completely forgot about it?

2 A. Yes.

3 Q. There's nothing wrong with that. That makes a
4 better juror than other people. Because
5 some people come in and say, "I have read
6 about it, I can't put aside whatever I
7 have heard in the newspaper." In some
8 cases -- I tried a case earlier this week
9 and it was involving a Newton Falls
10 police officer who allegedly had beat
11 someone while he was on duty and it was
12 caught on video tape and the video tape
13 has been shown throughout the past couple
14 of weeks, and it was shown when it first
15 happened. Well, if you just saw that
16 video tape, that's not the whole case.
17 You might have to know what happened
18 before and what happened afterwards, and
19 of course the news is only going to give
20 you 15 seconds of an hour long tape. So,
21 I guess I'm going to forget about
22 anything you have heard about this case,

1 because you have heard nothing about it,
2 so we're not going to touch upon that.
3 The other area that we have to ask you
4 about, we have some answers from you from
5 your questionnaire that you filled out
6 the other day. We're going to be a
7 little presumptuous, because this is
8 probably the most important in the
9 criminal setting type of trial that we
10 can have. It's a capital murder trial,
11 and capital murder trials are basically
12 in two phases. They call them phases, or
13 like two mini trials, and the important
14 thing to know or some of the important
15 things to know are that we're going to be
16 presumptuous, because we may not get to
17 the second phase, but we have to ask the
18 questions this way and we have to presume
19 that we're already in this phase where
20 you get to decide if someone should get
21 the death penalty, and in this case that
22 someone is Miss Roberts.

1 So, because we can't go and say,
2 "Let's have a trial and we have to prove
3 all of the elements of the crimes and
4 she's guilty and now we're going to come
5 back next week, and you jurors are going
6 to decide if you can sign a verdict form
7 that calls for the death penalty." And
8 two or three of the jurors say, "Wait a
9 minute, no one ever told me about that.
10 I can't do that for religious beliefs or
11 for ethical beliefs or morality, or for
12 whatever reason I can't do that." So we
13 have got to ask you now, even though we
14 may never get there. I know it sounds a
15 little crazy, but that is the way we do
16 things.

17 You gave some statements I think on
18 your questionnaire, that you believe, I'm
19 going to interpret as you believe in some
20 cases the death penalty is warranted?

21 A. Correct.

22 Q. In this case, as in every other capital murder

1 case though, there are other penalties
2 that you can give. You can give life
3 with no parole, you can give life with no
4 parole after 30 years, and life with no
5 parole after 25 years, so there's really
6 four different options that you will have
7 again, if we get to that point. And that
8 second part of the trial is going to be
9 just like the first part in a lot of
10 respects.

11 There's some law that the Court will
12 tell you as to what it is. There's some
13 things that again, the State has to
14 prove, and in both phases of the trial,
15 Miss Roberts doesn't really have to
16 present anything to you. She could sit
17 there and never get up. Her attorneys
18 could sit there and never speak, never
19 say a word. Now if you found that we had
20 proved our case beyond a reasonable doubt
21 and she was guilty, she could do the same
22 thing in the second trial and you

1 wouldn't have to give her the death
2 penalty. We might not meet our burden,
3 which is proof beyond a reasonable doubt
4 in either phase.

5 So, I guess what I'm going to try to
6 ask you is, first of all, if the facts of
7 the case warranted it, and if the
8 evidence proved it beyond a reasonable
9 doubt, and the Court will tell you later
10 on what reasonable doubt is, if you are
11 picked for this Jury, could you sign a
12 verdict form calling for the death of
13 this Defendant?

14 A. Yes, I could.

15 Q. Now, I am going to come at it from the other
16 side. I'll put on their hat. Now, if
17 the facts didn't warrant it and again
18 we're in the second phase. You already
19 found she's guilty of some things that
20 get her eligible for that. Now we're in
21 the second phase, and there may be one of
22 two ways that you might not sign a

1 verdict form calling for the death
2 penalty. One is, we may not prove that
3 the aggravating circumstances, which the
4 Court will explain to you what those are
5 when we get there, outweigh any
6 mitigating factors that she has. You may
7 say, "Well, the State didn't prove to me
8 that she deserved the death penalty."
9 You would have no problem signing a
10 verdict form calling for one of those
11 lesser penalties then, would you?

12 A. No, I would not.

13 Q. And the other way it maybe is, we may present
14 aggravating circumstances to you, but
15 they may present mitigating evidence, and
16 our aggravating circumstances not
17 outweigh the mitigation by proof beyond a
18 reasonable doubt. We may present to you
19 some terrible things, but it doesn't
20 outweigh by proof beyond a reasonable
21 doubt what their mitigation circumstances
22 are, so again, you could sign a verdict

1 form that might not call for the death
2 penalty?

3 A. Correct.

4 Q. And I guess what we're driving at is, you
5 would be fair and listen to all of the
6 evidence and all of the testimony and all
7 of the Exhibits and you would make your
8 decision accordingly?

9 A. Yes.

10 Q. And I know again we're talking about making a
11 leap in presumption here, but we're
12 trying to predict the future. We get to
13 the phase where it is guilt, whether
14 she's guilty or innocent and you find her
15 guilty by proof beyond a reasonable doubt
16 and we come back two weeks later and now
17 jurors, "By the way, you might have to
18 sign a form calling for a death penalty,"
19 we don't want anyone to say, "I can't do
20 that. No one told me I was going to have
21 to do that." We would have to start the
22 whole trial over and start this whole

1 process.

2 Now, there's some other things that
3 you need to know about this case, and
4 because it is a criminal case, one of the
5 things that is going to happen is the
6 Court is going to instruct you on the
7 important concept for both phases, if we
8 need both phases is called reasonable
9 doubt. I'm sure you probably heard of
10 that through television or movies or
11 reading in the newspaper. And the Court
12 will give a definition of what reasonable
13 doubt is. But one of the best ways to
14 explain it is sort of the old fill up the
15 glass. The Court will tell you, and in
16 so many words, that reasonable doubt
17 isn't the glass filled to the top of the
18 ring. It is not so high that if you just
19 touch it, water comes off over the side.
20 It is well beyond 50 percent because this
21 is a different standard under the law.
22 Fifty percent if the glass were half

1 full, half empty, if you put another drop
2 in to get it over half full. That is
3 what we call preponderance of the
4 evidence. That is where someone is suing
5 someone for, they were in a car wreck and
6 their legs were broken and they need some
7 money or they want to sue them for money
8 or something like that. That is when we
9 use that standard.

10 Then there's another standard that
11 is clear and convincing and to tell you
12 the truth, I don't know what that is, but
13 the one that I deal with the most,
14 because I have been in the criminal
15 setting is proof beyond a reasonable
16 doubt. And it is a little bit different
17 for everybody else, because we're talking
18 about -- we're talking about terms that
19 we just can't put numbers on them. We
20 can't say 75 percent or 80 percent. For
21 some people it might be a number like 90
22 percent or 95 percent or 98 percent. Do

1 you feel that you will be able to make a
2 determination like that, determining
3 someone's fate, but not knowing that
4 every possible doubt is gone, but beyond
5 a reasonable doubt?

6 A. Yes, I can do that.

7 Q. And you don't have any problem judging anyone,
8 correct?

9 A. Correct.

10 Q. And in this case, we're going to have some
11 witnesses, obviously, and one of the
12 things the Court is going to tell you
13 about the witnesses is, that your job as
14 a juror, if you are chosen for this case,
15 is you sort of figure out in addition to
16 finding reasonable doubt, you also sort
17 of determine whose evidence is
18 believable, is it worthy, can you trust
19 it, can you rely on it; that is totally
20 up to you, and your fellow jurors, if you
21 are picked for this case. And you are
22 basically just going to that, using the

1 same test you use every day, for maybe if
2 you have a co-worker that comes in and
3 says every day, "I won the lottery," or
4 "I have done this," or "I am dating some
5 girl on television," or I am doing this
6 or that and you kind of look at him and
7 say, "That doesn't make sense. I know
8 this guy, he lives in a trailer and he's
9 kind of a pig, and no know way this is
10 happening." You have the ability to do
11 that, right?

12 A. Yes.

13 Q. And to judge people and that is kind of what
14 you are going to be doing here and you
15 have got other people that you trust, I
16 think on your questionnaire. You admire
17 your mother quite a bit?

18 A. Correct.

19 Q. And I am assuming you trust her, and if your
20 mother tells you something like, "I don't
21 have any money to loan you," or "I can't
22 help you with this," you believe her

905

and --

MR. BECKER: I'm sorry, I am in this other trial. I'll let Mr. Bailey take over for you. I'll be back and I'm sure these gentlemen will still be speaking to you, but I have a verdict downstairs.

THE COURT: Why don't we wait for a couple of minutes and see if Chris comes back in a few minutes or whether Mr. Bailey will proceed?

EXAMINATION BY MR. BAILEY OF MS. SENEK:

Q. Good afternoon, Miss Senek. My name is Ken Bailey, and as you know, I am taking over for Mr. Becker who is occupied downstairs right now. I'll try to pick up where he left off. The Defendant here is charged with four different crimes or counts. Two counts deal with or two of the charges deal with the crime called aggravated murder, with specifications of aggravating circumstances that make her eligible for the death penalty. And there are two more counts of -- there's

1 one of aggravated burglary with a
2 firearms specification, and another count
3 of aggravated robbery with a firearms
4 specification. And this word
5 "specification," it is a fancy word that
6 just means an extra finding of fact for
7 the Jury to consider.

8 A. Okay.

9 Q. Now, you are going to learn that the Defendant
10 is not the trigger man in this case, that
11 the person who actually committed these
12 crimes physically is a fellow by the name
13 of Nate Jackson. The Defendant is
14 charged also as a complicitor, somebody
15 who solicited or procured or aided or
16 abetted another person in the commission
17 of a crime purposely. That means that
18 she helped or encouraged, strengthened
19 him in some way in committing these
20 crimes.

21 And with the crime of aggravated
22 murder as I mentioned, there are two

1 different theories of this crime. The
2 State is allowed to charge two different
3 theories. There's only one person who
4 has been killed, but there are two
5 separate charges for the killing. The
6 State is allowed do that and we have done
7 that in this particular case.

8 Now, with the first count of
9 aggravated murder, that deals with the
10 prior calculation and design. What we
11 used to call the old premeditated murder.
12 They changed that a little bit and it
13 requires some planning and forethought in
14 advance of the killing in this prior
15 calculation and design. The other count
16 of aggravated murder deals with the
17 killing during the felony murder,
18 purposeful killing during the course of
19 an aggravated burglary and/or aggravated
20 robbery. And as I mentioned, there are
21 these death penalty specifications of
22 aggravating circumstances attached to

1 these counts of aggravated murder. The
2 first specification charges a count of an
3 aggravating circumstance of aggravated
4 burglary that the aggravated murder was
5 committed during the course of an
6 aggravated burglary and that the
7 Defendant committed the aggravated murder
8 with prior calculation and design.

9 The second specification to the
10 counts of aggravated murder, are that the
11 aggravated murders were committed during
12 an aggravated robbery, and the Defendant
13 committed the aggravated murder with
14 prior calculation and design. Is there
15 anything about that that bothers you, so
16 that you wouldn't be able to consider
17 these?

18 A. No.

19 Q. And basically, this planning, the charge here
20 is that the Defendant and this Nate
21 Jackson planned this killing of the
22 Defendant's ex-husband for insurance

1 money and he stole a car. People often
2 ask what the difference is between
3 aggravated burglary and aggravated
4 robbery. The Judge is going to instruct
5 you on the elements of these crimes at
6 the end of this case and you are bound to
7 follow his instructions. Those are going
8 to guide you, but basically, the
9 difference between a burglary and a
10 robbery is a burglary is when somebody
11 trespasses inside a structure, an
12 occupied structure. In this case where
13 somebody is present with the purpose to
14 commit some kind of criminal offense
15 inside, and maybe they are armed with a
16 weapon like a gun that works, and they
17 cause serious physical harm to the person
18 inside. There is -- and the aggravated
19 robbery, aggravated robbery basically
20 deals with the use of force or threat
21 against the person as opposed to
22 trespassing in the structure, and it is

1 usually the commission of a theft
2 offense, and the Defendant either has a
3 weapon, a gun, or causes serious physical
4 harm to the person. So there's a
5 difference between those types of crimes.

6 Now, we talk about elements. Each
7 crime is composed of certain elements or
8 key component parts of the crime. You
9 ever bake?

10 A. Not really.

11 Q. You have -- well, you ever try to make an
12 instant cake with the package?

13 A. Yes, I have done that.

14 Q. Ever watch your Mom bake a cake?

15 A. Yes.

16 Q. When your Mom baked a cake, she used a recipe,
17 right?

18 A. Yes.

19 Q. And she probably had different recipes for
20 different cakes?

21 A. Yes.

22 Q. Chocolate cake, strawberry cake, whatever?

1 A. Right.

2 Q. Whatever she was going to make, chili or
3 whatever, and if you follow that recipe
4 and you put in all of the ingredients you
5 come up with your cake or whatever you
6 are baking, right?

7 A. Yes.

8 Q. If she was making a chocolate cake and she
9 left out the chocolate, the key
10 ingredient, she would have a cake, but it
11 wouldn't be a chocolate cake, would it?

12 A. Correct.

13 Q. The same thing with a crime holds true. Each
14 crime has certain ingredients that have
15 to go into the recipe for that crime.
16 The burden is on us, the people of the
17 State, to prove to you by proof beyond a
18 reasonable doubt each of the elements of
19 the crime.

20 For example, let's take this crime
21 called aggravated murder with prior
22 calculation and design. The Judge will

1 instruct you on the law afterward, and
2 I'm just going to give you a for instance
3 and you are bound to follow the Judge's
4 instruction. Let's say the first
5 elements would be, it happened on or
6 about a certain date, December 11, 2001.
7 The second element would be venue, that
8 it happened in Trumbull County, Ohio, so
9 we can try the case in this Courtroom,
10 rather than in Tuscarawas County or
11 Portage County. The third element is
12 identification. That the person who
13 committed the crime is here in the
14 Courtroom and someone would point her
15 out.

16 The complicity, that she acted
17 purposely, basically on purpose, but it
18 has a definite legal meaning that the
19 Judge will define for you at the end.
20 That she caused the death of Robert
21 Fingerhut, a living person; and six, that
22 she acted with prior calculation and

1 design.

2 So, the State would have to convince
3 you of the truth of those charges, so
4 that you are firmly convinced of the
5 truth of all of those elements, and only
6 those particular elements in each crime.
7 And you understand you are to consider
8 each crime individually, separately?

9 A. Yes.

10 Q. Because you might find her guilty of one, you
11 might find her guilty of one
12 specification on aggravated murder, but
13 not the other?

14 A. Okay.

15 Q. You may find her guilty of the aggravated
16 robbery and not of the aggravated
17 burglary. It is up to you, depending on
18 how you feel we have proved the elements
19 of the crimes -- you and the other 11
20 jurors. Now, it may well be that you
21 have an interest in something that we
22 never answer, a question that we never

1 ask. Like you might have an interest in
2 shoes and my wife has 50 trillion pairs
3 of shoes. She would be interested in
4 what somebody was wearing at the time.
5 But let's say, because we're
6 Prosecutor's, we're Attorneys, we have
7 got Defense Attorneys and Prosecutors are
8 all Attorneys. We're geared towards
9 proving or disproving elements, and we
10 would be looking at where it happened, or
11 proving prior calculation and design and
12 we never get to tread wear. We'll never
13 get into that area at all. You may
14 wonder what kind of shoes were they
15 wearing, but if it wasn't relevant to the
16 crime, that question would never get
17 answered and you would always wonder
18 about that. But if you feel that we have
19 proved the elements by proof beyond a
20 reasonable doubt, then you can return a
21 conviction even though there are some
22 unanswered questions?

1 A. Yes.

2 Q. Now, you understand the Defendant as she sits
3 there is presumed innocent and this
4 presumption of innocence cloaks her all
5 through the course of this trial, from
6 now until the end of the case, until you
7 are back in the Jury room deliberating on
8 the evidence.

9 A. Yes, I understand.

10 Q. And if you had to vote now, you couldn't vote
11 for any type of guilty verdict, because
12 we haven't produced any evidence?

13 A. Correct.

14 Q. And this presumption of innocence is an
15 important part of our system of justice
16 in this country, just like proof beyond a
17 reasonable doubt. There's a presumption
18 of innocence and the burden of proof is
19 on us, the people of the State. That
20 stays with us. The Defendant doesn't
21 have any burden to prove anything. The
22 burden of proving those elements is on

1 us. They can sit there on their hands
2 for the course of the trial, and if we
3 haven't produced enough evidence to
4 convince you of the Defendant's guilt
5 beyond a reasonable doubt, then you find
6 her not guilty. Even if they haven't
7 done anything. Okay?

8 A. Yes.

9 Q. And that burden never shifts. It always stays
10 with us, the people of the State. Now,
11 this is the only chance that we really
12 get to talk to each other during the
13 course of the case, until both phases are
14 over. Let's say we get into two phases
15 and if we run into each other in the hall
16 or on the elevator, when we bump into
17 each other, all we're allowed to do is
18 say, "Good morning." We're not being
19 anti-social. If you have any questions,
20 you have got to address it to the bailiff
21 or you can ask Mary Ann or the Judge, but
22 we can't actually talk to you. By our

1 rules of conduct, they could cause a
2 mistrial if we do that and we don't want
3 to do that. We're not being anti-social,
4 it is both sides aren't allowed to have
5 any conversation with you until the whole
6 case is over?

7 A. Okay.

8 Q. After it is over, feel free to come up and ask
9 us any questions. If you have any
10 questions during this process right now,
11 about what is going on here, and that is
12 germane to what we're doing, feel free to
13 ask it. It is a give and take.

14 Now, would you agree that in serious
15 crimes like crimes of murder for example,
16 most crimes in the planning take place in
17 secret without a whole lot of people
18 around. Sometimes somebody is silly
19 enough to stand on the Courthouse steps
20 and say, like I might say, "I'm going to
21 kill my co-counsel, Chris Becker tomorrow
22 at noon on the Courthouse steps." Then

1 everybody would know my intention. If I
2 actually did it, then I would be in big
3 trouble, right?

4 A. Correct.

5 Q. But, a lot of times, criminals don't plan
6 things in public with a lot of people
7 around to hear them. They plan it
8 covertly. And because of that, there are
9 different types of evidence that can be
10 used in a criminal case. There's what we
11 call direct evidence, where a person can
12 come in and testify what he or she has
13 learned through the use of his five
14 senses. "I heard the gunshot and it was
15 loud. I smelled the smoke, I touched the
16 body and it was cold." On the other
17 hand, there's what we have called round
18 about evidence or circumstantial
19 evidence. Sometimes people use that term
20 disparagingly, "circumstantial evidence,"
21 but really circumstantial evidence deals
22 with a situation where you are presented

1 with a fact or series of facts and then
2 you are asked to draw a logical deduction
3 to another series of facts, that you can
4 do based on the earlier facts. For
5 example, if you went to bed at night, you
6 live in a two story house. You look out
7 over your neighborhood. There's a clear
8 night. There's not a cloud in the sky.
9 The moon is beaming and you close the
10 blinds and you lay down. You have got
11 your radio on and the weather forecast is
12 predicting overnight, saying a cold front
13 is coming in. You fall asleep and
14 sometime during the night you awake and
15 you look toward the window that is
16 covered and you see a bright flash from
17 outside and couple of seconds later, you
18 hear a big boom up in the sky. And a
19 couple of seconds later, there's another
20 brighter flash, and really close in time,
21 instant boom up ahead and a pitter patter
22 on the roof. And then you hear a steady

1 drumming on the roof and you fall back
2 asleep and you get up in the morning and
3 open the window and you look out, the sky
4 is clear, not a cloud in the sky, the sun
5 is beaming and you look out. As far as
6 you can see across the neighborhood, the
7 streets are running with water, the drops
8 of water are dripping off the leaves of
9 the tree, and it is flooded everywhere
10 that you can see. And there's no fire
11 hydrant nearby where any car hit it to
12 knock water on your house or anything.
13 You know what happened during the course
14 of the evening, don't you?

15 A. Yes.

16 Q. What happened?

17 A. There was a thunderstorm.

18 Q. Right, and that is what you heard. You didn't
19 see it with your own eyes, but you saw
20 different circumstances that led you to
21 believe that, and you know that beyond
22 any reasonable doubt, don't you?

1 A. Yes.

2 Q. Now there's room in there for some silly or
3 imaginary doubt. You can imagine that
4 ET and his Martian buddies flew by in a
5 flying saucer over the night and
6 sprinkled some wet stuff and put on a
7 light show, but that would be a foolish
8 or imaginary doubt, wouldn't it?

9 A. Correct.

10 Q. Now you know that you can return a conviction
11 based on circumstantial evidence, if you
12 believe that it proves the elements of
13 the crime charged?

14 A. Yes.

15 Q. By proof beyond a reasonable doubt. And
16 sometimes some criminals are somewhat
17 silly in the commission of their crimes.
18 For example, you have read in the paper,
19 I imagine occasionally, or heard on T.V.
20 about maybe a bank robber going into a
21 bank, handing the teller a note in a
22 envelope saying, "Give me all of the

1 money," and takes some money and runs.
2 And it turns out the envelope, on the
3 back of it was his address, it was
4 written, the envelope was addressed to
5 him. And they find him, the burglar who
6 leaves his wallet at the scene. Just
7 goes to show that criminals aren't always
8 rocket scientists, right?

9 A. Correct.

10 Q. And when we talk about circumstantial
11 evidence, to know what a person was
12 planning in advance, you can look at
13 things like make letters or telephone
14 conversations if you have them, right?

15 A. Correct.

16 Q. And then you would know what was in the
17 person's mind?

18 A. Correct.

19 Q. Now, this happened in this County, this crime
20 that is charged with happening in this
21 County, and you may or may not be
22 conducted on a view of the scene, but if

1 you are, you will be in the custody of
2 the bailiff. Other than that, you are
3 asked not -- you are not allowed to go up
4 to that neighborhood to do your own
5 investigation. I know there have been
6 movies sometimes and they are only movies
7 or T.V. or things like that, because if
8 you do that in real life, it causes a
9 mistrial. We had one case where a juror
10 went out to investigate on his own and
11 created a mistrial, or he went to the
12 scene to see what he could see. So you
13 know, you wouldn't do anything like that,
14 right?

15 A. No, I wouldn't do anything like that.

16 Q. I take it you feel that people should be held
17 accountable for their actions?

18 A. Correct.

19 Q. And because lawyers are geared toward looking
20 at elements of crimes, generally we focus
21 our questions to witnesses on proving
22 those elements. Things that would be

1 relevant and material to what is at hand
2 here. And sometimes, you might think,
3 "Well, gosh, I wish I could ask this
4 question." But in our system in Ohio,
5 you are not allowed to ask questions of
6 the witnesses. You can't submit them to
7 the Judge. They may do that in some
8 other jurisdictions, but it doesn't
9 happen in Ohio, and you have to rely on
10 the questions asked by the lawyers. So,
11 if we don't ask the questions, then you
12 are sort of stuck without that question
13 being asked, right?

14 A. Yes.

15 Q. You also can't take notes. Back in school,
16 you could take notes. You ever listen to
17 the radio when you were a kid?

18 A. Yes.

19 Q. And you paid close attention, other than
20 music, you ever listen to soap operas on
21 the radio or anything like that?

22 A. Yes, I have.

1 Q. And you pay close attention, right, because
2 there's no picture there?

3 A. Yes.

4 Q. So, you would be listening for half an hour,
5 or hour, depending on how long that
6 production was going on. We're going to
7 ask you to do the same thing here. You
8 have a witness in front of you and we're
9 going to ask you to pay very close
10 attention to the testimony of the
11 witness, because unlike the O.J. Simpson
12 trial or these other trials where they
13 got a million dollars worth of equipment
14 where they can do instant transcripts.
15 There aren't going to be any transcripts
16 of the testimony. You are going to have
17 to rely upon your memory and the
18 collective recollection of the other 11
19 jurors when you go back to deliberate.

20 Sometimes jurors ask, "Can we get
21 the testimony of so and so," and the
22 Judge is going to tell you generally no,

1 you can't have that, you have to rely
2 upon your recollection. Mary Ann is very
3 good as a Court Reporter, but she can't
4 get out instant transcripts. We don't
5 have that ability. So just like Juries
6 have done for ages, you are going to have
7 to rely on your recollection of the
8 testimony.

9 A. Okay.

10 Q. You will be able to do that?

11 A. Yes, I am.

12 Q. I wanted you to know there aren't any instant
13 replays or things like that in the
14 Courtroom. Maybe 50 years down the road,
15 but not today. We don't have that.

16 During the course of the trial, you
17 are going to be face to face with the
18 Defendant, and perhaps during the course
19 of the trial, as you come face to face
20 with her as your chair is turned towards
21 you, you will become more acquainted with
22 her.

1 My question to you is this. When
2 you go inside that Jury room to
3 deliberate on your verdict with the other
4 jurors, can you lay aside all thoughts
5 whatsoever you might have of sympathy for
6 the Defendant, because it is only a
7 natural human emotion to feel some
8 sympathy for somebody and lay aside that
9 sympathy, and base your verdict on the
10 testimony and the evidence that you
11 receive and the instructions of law given
12 to you by Judge Stuard, and lay aside all
13 thoughts of sympathy that you might have
14 for this Defendant?

15 A. I believe I can do that.

16 Q. Now, at the conclusion of the first phase of
17 the case when the Jury goes out to
18 deliberate, you are going to be
19 sequestered. It means you will be kept
20 together and you won't be able to go home
21 at night. Some jurors, we don't know how
22 long it is going to take, because every

1 Jury is different, the trial may take up
2 to two weeks, perhaps. The Jury
3 deliberations can take anywhere from two
4 hours to a few days, or a week. And
5 let's say you and the other jurors return
6 a verdict finding the Defendant guilty of
7 aggravated murder with one or more of the
8 death penalty specifications of
9 aggravating circumstances. Then you
10 would go home for maybe a week or so and
11 then we would go into a second phase.
12 And at a second phase, you come back in
13 and that could take one to three days, it
14 depends. And then again, you would go
15 out to deliberate and you would be
16 sequestered again for the second time.
17 And again, the deliberations would take
18 as long as it takes, anywhere from a
19 couple of hours to a couple of days or
20 whatever. And you take whatever time you
21 needed to make your deliberations, right?

22 A. Yes.

1 Q. And being sequestered, that wouldn't bother
2 you?

3 A. No.

4 Q. Do you have any personal matters at home or
5 work that will affect your ability to
6 concentrate on the evidence here? I
7 expect we'll be starting the trial in a
8 couple of weeks.

9 A. No, I don't. The only thing I want to say is
10 if I had a choice to be here, I would say
11 no, for the fact that I just recently got
12 this job, and I have already been out for
13 two to three months due to a major
14 accident and I am finally going back to
15 work and it is just the fact that I have
16 this time off. I know it is my civil
17 duty to be down here and everything, I
18 don't have a problem with that, it is
19 just --

20 Q. They are not going to fire you or anything?

21 A. No, it is nothing like that. It is a personal
22 thing.

1 Q. I understand what you are saying. I mean,
2 Jury duty is a difficult thing to do.
3 Especially with a new job. But would you
4 agree with me that to make sure our
5 system of justice works in this country,
6 it is important that we fulfill our
7 obligations as citizens?

8 A. I agree with that totally.

9 Q. One of our obligations would be, if it is
10 election time, we try to read up on the
11 candidates and issues and vote?

12 A. Yes.

13 Q. If it is war time, we serve in the armed
14 forces, if we're called?

15 A. Yes.

16 Q. We have young people overseas today in
17 different countries and another
18 obligation of citizenship is to serve as
19 a juror, to serve if we're able to?

20 A. I agree.

21 Q. Sometimes it is difficult. It causes
22 financial hardship for some people. It

1 causes disruption in their lives at home
2 and at work, but if we're able to, to
3 make sure the system works, it is
4 important we get people from all walks of
5 lives, people who are intelligent with
6 all kinds of training and experience.

7 THE COURT: I think you are
8 preaching to a choir. She's agreeing with you.

9 A. I wanted to make a note of it, on your
10 opinion. You said I could throw out
11 questions and comments.

12 MR. BAILEY: I thank you for your
13 candid answer and the Defense counsel will have an
14 opportunity to address you.

15 EXAMINATION BY MR. INGRAM OF MS. SENEK:

16 Q. My name is Jerry Ingram. This is John Juhasz
17 and John and I share the responsibility
18 of representing Donna Roberts here, who
19 is on trial for her life. Obviously, you
20 take your responsibilities very
21 seriously. John and I feel we should
22 take every reasonable precaution in

1 selecting a fair minded Jury, the same
2 type of Jury you or I would want if we
3 were on trial. This is the only
4 opportunity we can talk directly to one
5 another. I can talk directly to you, but
6 more importantly, you can talk directly
7 to me. So, we should try to have a
8 conversation, but lawyers being lawyers,
9 we're trained to monopolize the
10 conversation.

11 If there's any questions you would
12 like to ask or anything that pops into
13 your mind, please feel free to volunteer
14 information. When you walked in, I got
15 the sense that you were a little nervous?

16 A. Yes, very nervous.

17 Q. Are you more comfortable now? Nobody here
18 bites. We're not bad guys.

19 A. It is the fear of the unknown.

20 Q. Do you feel a little more comfortable now?

21 A. Yes, I do. Thank you.

22 Q. This is a lot like a job interview, except

1 when someone goes into WCI to be
2 interviewed, they choose to come in to be
3 interviewed, and in this situation, the
4 Jury wheel sort of chose you. You had no
5 choice. And let me ask you just one
6 quick question about that. About what
7 you just told Mr. Bailey about your job.
8 You have been off for a couple of months?

9 A. Yes.

10 Q. If we ask you to spend a couple of weeks with
11 us, will your mind be here or will your
12 mind be elsewhere?

13 A. My mind would be here.

14 Q. We're interviewing you today for one of the
15 most important jobs there is, the job of
16 finding the truth and determining the
17 fate of another human being. Now, would
18 you agree with me that that is an awesome
19 responsibility?

20 A. I don't know if I would use the word
21 "awesome."

22 Q. What word would you use?

1 A. I don't know the word I want to use, but it
2 carries a lot of weight on you. It is a
3 huge responsibility.

4 Q. How do you feel about being asked to undertake
5 that responsibility?

6 A. I feel like I can handle it. It is like the
7 ultimate job you could ever do.

8 Q. Your job responsibility now, if you are
9 selected to sit, will be to fairly and
10 impartially determine facts. Your job
11 responsibility now is to tell us if you
12 would have any problem giving either side
13 a fair shake; does that sound reasonable
14 to you?

15 A. I do not have a problem with giving either
16 side a fair shake.

17 Q. Donna Roberts and Robert Fingerhut were
18 divorced, but continued working together
19 at the Greyhound bus station in
20 Youngstown and Warren and living together
21 in Howland Township. In a nutshell, this
22 case boils down to the Government's

1 allegation that Donna plotted or
2 conspired with a male companion, Nate
3 Jackson, to cause the death of Robert
4 Fingerhut. You understand this trial is
5 about the innocence or guilt of one
6 person, and one person only, and that
7 person is Donna Roberts?

8 A. Yes.

9 Q. Throughout the course of these proceedings,
10 you will hear the name Nate Jackson, and
11 you may conclude that Nate Jackson did
12 what the State says he did, but that is
13 not the issue you are here to resolve.
14 The issue you are here to resolve is did
15 Donna Roberts help him.

16 A. Yes.

17 Q. In supporting its allegation, that Donna aided
18 or participated in the death of Robert
19 Fingerhut, the State will present various
20 letters and recorded conversations
21 between Donna and Nate. Some of these
22 letters and conversations are sexually

1 explicit. And to be candid with you,
2 some of them are offensive. But you
3 understand here that the allegation is
4 murder, not loose morality?

5 A. Correct.

6 Q. And no matter how shocked or offended you may
7 be by the sexual nature of some of this
8 evidence, your job responsibility as a
9 trial juror will be to test the State's
10 evidence to determine whether it ties
11 Donna to the death of Robert Fingerhut;
12 do you understand that?

13 A. Yes.

14 Q. Donna Roberts denies that she actually
15 participated by conspiracy, plot or
16 otherwise in the murder of Robert
17 Fingerhut. Some people would have a
18 difficult time giving a scarlet woman a
19 fair shake. Do you have any problem
20 giving a scarlet woman a fair shake?

21 A. I have no problem.

22 Q. Would you have the courage to acquit, if you

1 felt a not guilty verdict was warranted
2 by the evidence?

3 A. I have no problem.

4 Q. Because this is a capital case, I have to talk
5 to you about penalties. You understand
6 that this is potentially and only
7 potentially a two phase process?

8 A. Yes.

9 Q. The first phase is called the trial phase, and
10 if Donna is found not guilty at that
11 trial phase, what happens?

12 A. That is it.

13 Q. We all go home. Do you understand you may
14 never have to consider the question of
15 punishment?

16 A. Yes.

17 Q. I am a little bit -- I have a personal concern
18 about at this stage of the proceedings
19 talking with jurors about punishment. It
20 seems a lot to me like putting the cart
21 before the horse. You know we're talking
22 about what you might do to someone, and

1 you don't even know if that person has
2 done anything wrong. Does that make
3 sense to you?

4 A. Yes, it does.

5 Q. Can you understand my concern?

6 A. Yes.

7 Q. You don't think that by asking you these
8 questions about punishment, that we're
9 predicting we'll get to a second phase.
10 Because we're lawyers, we're not fortune
11 tellers. So, let me ask you just
12 straight up. Do these questions about
13 possible punishment lead you to believe
14 that Donna was involved or we wouldn't be
15 asking you these questions?

16 A. No.

17 Q. If a juror in any capital case, not
18 necessarily this one, anyone, we could
19 make up a capital case -- if that Jury
20 gets to a second phase, there are four
21 punishments. Death, life imprisonment
22 without possibility of parole, life

1 imprisonment with parole eligibility
2 after serving 30 full years, life
3 imprisonment with parole eligibility
4 after serving 25 full years. Life
5 without parole is exactly what it says.
6 You go in, you don't get out. You
7 understand that?

8 A. Yes.

9 Q. And the 25 full years and the 30 full years
10 you are not eligible for parole until you
11 have done 25 full years, day for day, 30
12 years, day for day. Have you ever
13 engaged anyone in the conversation about
14 the death penalty or someone has maybe
15 volunteered to you, that I think they
16 should execute those people down in
17 Texas, because it is not fair that we
18 have to pay to keep them in prison? You
19 ever hear anybody say anything like that?

20 A. Yes.

21 Q. Do you have a view on this cost issue?

22 A. To a certain degree, yes, I have.

1 Q. Could I ask you what that view is?

2 A. That is a hard question.

3 Q. I'm going to press you for that. If I were
4 sitting where you are and you were
5 standing here, and I would loan you my
6 notebook, you could ask me the same
7 questions I'm asking you, and I also
8 would have a hard time answering these
9 questions, so I understand it is
10 difficult. We only ask that you do your
11 best. So what are your views about the
12 cost issue?

13 A. I feel that if an individual is proven guilty,
14 there's no doubt, no question in your
15 mind, I feel that that individual should
16 get the death penalty. If it has an open
17 state, instead of going to prison and
18 having the prisons educate criminals,
19 having prisoners that are able to sue the
20 individual that put them away. I believe
21 that when you go to prison, it shouldn't
22 be a luxury. I don't care what the crime

1 is. I don't care if you are in prison
2 for three months because you stole a
3 Snickers candy bar. You go there, you do
4 your time.

5 Q. I sort of liken them to take the telephones
6 out because then people couldn't call me
7 on the telephone. That is my own
8 personal wish. Generally,
9 philosophically, how do you feel about
10 life imprisonment as an alternative to
11 the death penalty?

12 A. It all depends on the crime I think, and the
13 evidence that was presented in the case.
14 Life imprisonment for my understanding,
15 and I am no lawyer, I don't think you
16 have to commit a murder to have life
17 imprisonment. You could commit another
18 crime, for instance, you get in a car
19 accident and, I don't know what it is
20 called.

21 Q. Vehicular homicide.

22 A. It was an accident. I don't think that

1 individual that was behind the wheel, he
2 didn't or she didn't have intentions of
3 killing somebody else when they got in
4 the car. It just happened to be that the
5 roads were slippery that day. So I think
6 it all depends on the evidence in a case.

7 Q. How about in cases of planned murder?

8 A. Without knowing the circumstances and perhaps
9 knowing how somebody is thinking at that
10 time or trying to understand how that
11 person is thinking, again it all depends
12 on what is presented to me. I can't say
13 yes or no to your question.

14 Q. I wasn't calling for a yes or no. You have
15 answered my question. I'm going to ask
16 you an equally hard question, I think and
17 I apologize. In your questionnaire, you
18 were asked why you thought we -- or why
19 you were in favor of the death penalty, I
20 think, and your answer was, "You do the
21 crime, you do the time." Can you explain
22 that to me?

1 A. I cannot think of his name.

2 Q. Robert Blake?

3 A. The guy over in California. He was in the
4 cult.

5 Q. Charles Manson.

6 A. Take him for instance. Totally insane, this
7 is my personal opinion, totally insane,
8 committed vicious murders. Just went out
9 and just randomly killed people, a
10 pregnant woman of all people to kill, and
11 he still is sitting in jail because from
12 my understanding at that time, they
13 didn't have the death penalty. Well, the
14 next best thing for him is to rot his
15 life away. He was committed or he was
16 found guilty. Am I answering these
17 questions right?

18 Q. I am making you uncomfortable all over again.
19 I'm sorry. I want to emphasize that I
20 know these questions are unpleasant for
21 you to answer and I know they are hard
22 questions to answer, and there are no

1 right or wrong answers. The only mistake
2 you could possibly make is if instead of
3 telling me how you really feel, you tell
4 me what you think I want to hear. You
5 are doing a great job. I am the one that
6 is probably stumbling and stammering up
7 here.

8 In your questionnaire, you were also
9 asked a question, I believe it was --
10 that questionnaire comes back to haunt
11 you, doesn't it? You were asked the
12 question about why we have a death
13 penalty in this country and I think your
14 answer was, "I don't know. We don't use
15 it."

16 A. We don't use it enough.

17 Q. So you think we should use it more often?

18 A. Yes. Yes, I do, when an individual is found
19 guilty. Without any questions, any
20 questions. I'm not just saying anybody
21 should have the death penalty. There are
22 certain cases where individuals get life

1 in prison and I don't believe they should
2 go there.

3 Q. Is there anything that characterizes those
4 cases where someone gets life and you
5 don't think they should go to prison for
6 life?

7 A. One I can think of is like a crime of passion.
8 For instance, you are married, and you
9 walk in and my husband is having an
10 affair, and I kill him. For that split
11 second, I don't feel I'm insane, but for
12 that split second, yes, I was insane. I
13 didn't know what I was doing, so no, I
14 don't think that individual should get
15 the death penalty.

16 Q. We used to have a murder statute in this state
17 called premeditated murder. And that
18 statute -- we no longer have that statute
19 and I'm just using this as an example. I
20 don't want to confuse the present law.
21 Is that understood?

22 A. Okay.

1 Q. Premeditated murder said that you
2 intentionally purposely planned to kill
3 somebody and then you undertook the
4 actions to implement your plan and killed
5 that person. Premeditated murder. You
6 did it on purpose. You did it with
7 planning. In your view of things, is a
8 life sentence alternative an appropriate
9 sentence under those circumstances?

10 A. No.

11 Q. I'm going to back up for a second. All of us,
12 because of who we are, what we are and
13 our life's experiences, have thoughts,
14 feelings and attitudes about one thing or
15 another. You agree with that?

16 A. Yes.

17 Q. And I'm going to use me for an example. You
18 can ask me to temporarily surrender and
19 put aside some of my thoughts, feelings
20 and attitudes, and I feel more strongly
21 about some things than other things. Are
22 you like that?

1 A. Yes.

2 Q. Some things I would be willing to set aside,
3 and other things, I would not be willing
4 to set aside. Does that make sense to
5 you?

6 A. Yes, it does.

7 Q. There are four possible penalties in the
8 second phase of any capital trial. You
9 and I have already discussed those. You
10 know what they are. Are your views on
11 capital punishment such that if you went
12 to a second phase in a premeditated
13 planned murder case, where you had found
14 beyond a reasonable doubt that the
15 Defendant committed the murder, are your
16 views such that the death penalty would
17 have a leg up over the other three?

18 A. I have no question in my mind.

19 Q. You have returned a verdict of guilty on the
20 aggravated murder charge. You have found
21 the Defendant guilty. You have found the
22 Defendant committed a premeditated

1 planned murder. You are now called upon
2 to determine punishment. I think what
3 you are telling me is that you would
4 favor death?

5 A. Correct.

6 Q. So, if you were called upon in those
7 circumstances to determine a punishment,
8 the death penalty would have a leg up
9 over life imprisonment because you have
10 convicted someone of an intentional
11 murder?

12 A. Key word is leg up. Yes, it is favored, I am
13 favored that way, but there's always a
14 but -- there could be.

15 Q. What is the but?

16 A. It has a leg up, but it may not be, if that
17 makes sense.

18 Q. I think it does, but I'm sure it makes sense.

19 A. It is like you said earlier, I favor this view
20 over this view. How's that?

21 Q. That is good. So if you were called upon to
22 determine sentence in a case of the kind

1 we're already talking about, the four
2 alternative sentences would not start out
3 equally in your mind, would they?

4 A. No.

5 Q. The death penalty would start out with a head
6 start, is that right?

7 A. Yes.

8 Q. Would you then expect the Defendant in that
9 case, to convince you that it should be
10 one of the other sentences?

11 A. Who else is going to convince me otherwise,
12 besides my jurors?

13 Q. Well, the State has the burden of proving that
14 death is the appropriate punishment.

15 A. Okay.

16 Q. And I'm going to have to make an editorial
17 comment. If you find me putting words in
18 your mouth, don't let me do it.

19 A. I won't.

20 Q. I didn't think you would. I forget where I
21 was at.

22 A. The State has the burden of proof.

1 Q. Because of your views, and the fact that the
2 death penalty will have a leg up, are you
3 going to require the Defendant to prove
4 to you that life is the appropriate
5 penalty?

6 A. I guess. Can you rephrase that, because I'm
7 not quite sure what you are asking. I
8 think I do, but if you rephrase it.

9 Q. I'll do my best. We have already established
10 that in your view, the death penalty will
11 start out with a leg up over the others.
12 A head start.

13 A. Right.

14 Q. Because the death penalty has a head start in
15 your mind, will you then expect the
16 Defendant to satisfy you that life
17 imprisonment is the appropriate penalty,
18 not death?

19 A. No, I wouldn't think it would be the
20 Defendant.

21 Q. How so, if you are giving the death penalty a
22 head start?

1 A. It would have to be the other side that would
2 have to present the facts to me.
3 Although it could go the other way, the
4 Defendant, if you are not doing your job
5 and you are being laxidazical or
6 sometimes things get switched around, I
7 would put the burden of proof on the
8 State more so than the Defendant. It is
9 not the Defendant's job.

10 Q. Is that on guilt or innocence or is that on
11 punishment?

12 A. I would say both. It is on both guilt and
13 punishment.

14 Q. I'm going to go back a little bit. You
15 remember the orientation instructions
16 that the Judge gave on Tuesday? Were you
17 present for that?

18 A. Yes, I was.

19 Q. And just a little editorial comment. Remember
20 him telling you that if a juror was
21 excused, it was because the juror was
22 giving an honest and a forth right

1 answer?

2 A. Yes.

3 Q. Do you recall him also telling you in that
4 orientation instruction, that if a Jury
5 were to go to the second phase, that all
6 four punishments should start out equally
7 in the juror's mind?

8 A. Yes.

9 Q. And you read preliminary instructions before
10 coming up here this afternoon, and I
11 believe also in those preliminary
12 instructions the Judge indicated that all
13 four penalties should start out equally
14 in your mind?

15 A. Yes.

16 Q. I want you to and I'm sure you will do this.
17 I want you to search your soul for a
18 second. And if you have to determine
19 punishment, do those four punishments
20 start out equally in your mind or does
21 the death penalty have a head start?

22 A. Are we talking about any kind of case?

1 Q. Talking about a premeditated planned murder
2 case.

3 A. I honestly would have to say the death
4 penalty. I have stronger feelings
5 towards that.

6 Q. I know you are being honest and I appreciate
7 that fact, and I really, I am sort of mad
8 at myself that I'm not very artful at
9 this, forgive me. I should be able to do
10 a better job. Your views are simply such
11 that for someone who has been convicted,
12 proven guilty beyond a reasonable doubt
13 of aggravated murder, planned
14 premeditated murder, that the appropriate
15 penalty should be death?

16 A. No, I didn't say that.

17 Q. The death penalty has a head start?

18 A. Yes.

19 Q. So, you are honestly telling me that the death
20 penalty then has a head start at a second
21 phase, is that right?

22 A. Yes.

1 Q. Is there anything that I have talked with you
2 about that you would like to ask me
3 about?

4 A. No.

5 Q. No questions that popped into your mind? I
6 would want to get rid of me as quickly as
7 I could, too.

8 MR. INGRAM: I thank you for your
9 time.

10 THE COURT: Thank you.

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
12 OF HEARING)

13 THE COURT: Sheri, it is my
14 perception, you sat here and totally were honest
15 and that is what we asked you to do and we
16 appreciate that. I make that observation because I
17 think that you have stated something that probably
18 is very simply true, doesn't take a lot to
19 understand it, and that is that on its face, if
20 somebody has committed a murder that falls within
21 the death penalty possibility, maybe most jurors
22 will think even though they don't express it the

1 way you have, that that is kind of the starting
2 point for the second phase. They have already been
3 convicted by this Jury, so death penalty is
4 probably next. You have answered the question very
5 wisely as put to you by Mr. Ingram. Mr. Ingram
6 could profess all day, he's not very good at asking
7 questions. That isn't true. He's very skilled.
8 You caught the distinction I suspect, most people
9 probably would not, and that is that to expect that
10 the Defense on that second phase would have to
11 prove something to rebut and that isn't true, of
12 course, as you stated. The burden is always on the
13 State. The mitigating factors are presented by the
14 Defense, but that is merely something for the
15 Prosecution to shoot at and to overcome.

16 The bothersome part here is, however you
17 have stated that you would have, I guess, a
18 presumption that the death penalty should apply.
19 That isn't what the law is. The law requires that
20 you go into that second phase, if we got to that,
21 with the term that has been used here quite a bit,
22 a blank slate. Now that is asking a lot of

1 anybody, but that is what we ask of the jurors,
2 that you could begin that second phase with an open
3 mind of -- the same thing applies if somebody that
4 is going to be a juror starts out, "Well, I'm going
5 to go for life without chance of parole, rather
6 than even consider the death penalty." That means
7 the State doesn't get a fair trial that they are
8 entitled to. Now you may hold that as a conviction
9 as we told you, that you are entitled to your
10 convictions.

11 My question to you is and Mr. Ingram did
12 ask you several different times in different ways
13 and you answered the same, so it may be your
14 thought on the matter. You really feel or do you
15 not that you would have a difficult time if need be
16 going into that second phase, with the mind set
17 that we're asking you to have?

18 MS. SENEK: An open mind set on the
19 four different --

20 THE COURT: That you don't have any
21 preconceived opinion until you have heard the
22 evidence as to what the outcome should be?

1 MS. SENEK: I can walk in here with
2 an open mind. It is like your favorite kind of ice
3 cream is chocolate and every time you go into the
4 Baskin Robbins, always get chocolate, but there's
5 so many other different flavors, and then it is
6 just that one time you walk in there and you order
7 vanilla. Just because you go in thinking you are
8 going to get chocolate this time, sometimes it
9 doesn't always happen that way, and I am and I do
10 have an open mind enough to try something else or
11 to have another view. I also like to add, not
12 being in the Court system, what do you always hear.
13 You always hear about the death penalty. You never
14 hear about 25 years to life or 30 to life. You
15 don't hear about that stuff. So, my opinion is I
16 have always grown up with knowing the death penalty
17 and not knowing the other three and what they
18 actually mean. So I think that is another reason
19 why --

20 THE COURT: You are saying it has
21 been thrust upon you out of the blue here and you
22 are kind of overwhelmed?

1 MS. SENEK: Right.

2 THE COURT: Well, the simplest way I
3 can put it is, you understand what the law requires
4 and that is that each juror, not that they don't
5 have other opinions or prior opinions, but that
6 they are able to set them aside and to follow the
7 law, and that requires in effect, a show me
8 attitude in that second part that I'm here, you,
9 Mr. Prosecutor, have proven to me that these
10 aggravating circumstances outweigh the mitigating
11 factors. I'm going to listen to that.

12 MS. SENEK: Yes.

13 THE COURT: What is your answer?
14 Are you able to do that or not?

15 MS. SENEK: I believe I'm able to
16 follow the law.

17 THE COURT: You have no reservations
18 in your mind about that?

19 MS. SENEK: No, I do not.

20 THE COURT: You can give the
21 assurance to these folks that you will follow the
22 law?

1 MS. SENEK: Yes, I can.

2 THE COURT: You may inquire, if you
3 wish.

4 MR. BAILEY: I think she's answered
5 that.

6 EXAMINATION BY MR. INGRAM OF MS. SENEK:

7 Q. He's back. I'm sorry.

8 A. Don't be sorry, you are doing your job.

9 Q. Let's go to Baskin Robbins. As I understand
10 it, you go into Baskin Robbins, your
11 favorite flavor is chocolate. Someone
12 might talk you into vanilla, but
13 ordinarily you get chocolate?

14 A. Right.

15 Q. When you walk through the door odds are, you
16 are getting chocolate?

17 A. Correct.

18 Q. Now I have to translate that to the situation
19 we're in. And I may have a hard time
20 doing that. I'm not nearly as artful as
21 the Judge might like to think. In a case
22 where somebody has been convicted of

1 premeditated aggravated murder, planned
2 deliberately, if you are called upon to
3 determine a sentence, just as you like
4 chocolate, you are going to be inclined
5 to favor the death penalty?

6 A. I'll say this, only because of how I believe
7 or in this case, if you go with
8 chocolate, because that is my favorite
9 flavor. I guess what I'm trying to say
10 is, you keep asking me the same question,
11 and I keep answering it the same way.
12 The death penalty does have a leg up.
13 But if I am picked and like the Judge
14 asked me, that I need to follow the law.
15 And I have got to set some of my opinions
16 aside and some of my strong beliefs, and
17 I have got to go in with an open mind.
18 Somebody's life is in my hands and I'm
19 not going to just all right, she's
20 guilty, he's guilty, that is it. Let's
21 get rid of them. That is not how I
22 believe. I don't just take a life for

1 granted, no matter who that person is.
2 So, yes, I can go in that back room and
3 weigh the four different ways equally,
4 even though before I went into that room,
5 I may have a stronger opinion on one than
6 the other.

7 Q. I never meant to intimate that you would do
8 anything other than a fair and serious
9 job, because I'm sure you would, but you
10 have told me a bunch of times in response
11 to numerous questions that I have asked,
12 that the death penalty would have a leg
13 up and you just repeated that. And that
14 is an honest and a heartfelt response,
15 isn't it?

16 A. Correct.

17 Q. Because that is the way you feel?

18 A. Correct.

19 MR. INGRAM: Thank you. I have no
20 further questions. Thank you.

21 THE COURT: Sheri, we thank you for
22 your time. You are excused from -- I do want to

1 thank you again for your total honesty. I don't
2 perceive that you have answered these questions
3 just to get off this Jury. I am very convinced
4 that you are willing to serve, but you have
5 answered the questions very honestly, and we do
6 appreciate that.

7 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
8 OF HEARING)

9 (In-chambers)

10 THE COURT: Mr. Calhoun, when we had
11 him, there was a side bar conference, wherein the
12 Defense made a general objection for cause, and
13 after further inquiry, the Court decided to excuse
14 him. Is that correct, gentlemen?

15 MR. INGRAM: Yes.

16 MR. JUHASZ: Yes.

17 MR. BECKER: Yes.

18 MR. BAILEY: Yes.

19 THE COURT: There's been a side bar
20 conference in this regard twice. After the first,
21 I asked the additional questions which prompted
22 Mr. Ingram to ask further questions. We're

1 in-chambers at the request of the Prosecution to
2 put something on the record because I have, without
3 totally discharging her, come close to it. What is
4 your objection?

5 MR. BAILEY: My understanding of
6 what she's saying, she's telling us that her
7 personal belief, the death penalty has a leg up.
8 If she were to be on the Jury and she were sent
9 into the Jury room to deliberate, she would follow
10 the law. She would set aside her personal belief
11 where the death penalty has a leg up and she would
12 consider all of the punishments, and that she would
13 be fair to both sides.

14 THE COURT: That is what she told
15 me.

16 MR. BAILEY: I think that is what
17 she's saying.

18 MR. BECKER: The last answer isn't
19 the definitive answer.

20 THE COURT: I thought that her last
21 answer and the reason that Ingram sat down was that
22 she pretty much went back -- his last question, if

1 I remember was to the effect, but your preference
2 is going to be the death penalty.

3 MR. BAILEY: That meant her personal
4 belief.

5 MR. BECKER: She's expressing her
6 personal belief and it's not what the last thing
7 she says to Mr. Ingram, because in this case, if
8 Mr. Ingram or Mr. Juhasz went last, I'm sure as
9 talented as they are, they could get every juror to
10 say what they want them to say. It is not the last
11 answer.

12 THE COURT: I agree it's a close
13 call. I have made my mind up a long time ago, when
14 it is a real close call to go with the Defendant,
15 not always.

16 MR. BAILEY: I think if you ask her
17 one more question.

18 THE COURT: I think that the girl,
19 as I stated before is being embarrassingly honest.
20 She's drawn a very fine line here. She has
21 testified that she understands if she has a
22 preference, which she stated, she could not

1 exercise that preference. She has to follow the
2 law. She stated, "I can follow the law." But the
3 last question was, I still have the preference. I
4 don't know where that leaves us, but --

5 MR. BAILEY: I think you have to ask
6 her can she, if she's on the Jury, can she set it
7 aside. If she says yes, then there's your answer.

8 MR. JUHASZ: I would have to say as
9 often is the case, I don't agree completely with
10 anybody. I agree with you that she should be
11 excused. I would respectfully disagree with you
12 that I don't think it is as close a case, as we're
13 trying to paint it. I think she's a classic Morgan
14 vs. Illinois juror, and Morgan made very clear,
15 that when the Trial Judge turns to somebody and
16 keeps saying, as I have had happen in capital
17 cases, and say, "But can you follow the law?" Of
18 course they all want to follow the law and Morgan
19 makes very clear, and even has language that says,
20 but when their personal beliefs are such that it is
21 very clear what their beliefs are and that they
22 can't follow the law, even though they want to be

1 fair, and the language for Morgan is --

2 THE COURT: It is just natural to
3 believe that -- she started her answer in her
4 thing, the answer up through to the point where you
5 really pinned her down, was such that death
6 conviction, death. Or conviction for aggravated
7 murder, death. You kind of got her to fudge on
8 that to say that she will accept the instruction,
9 but there's no question in any of our minds, nor
10 should there be, that this girl holds a pretty
11 strong conviction that if somebody is convicted for
12 this, they should start out with considering the
13 death penalty, so I grant the Defendant's motion.
14 (End of In-chamber discussion.)

15 THE COURT: Miss Senek, you get back
16 to your job. We're not going to keep you. We do
17 appreciate your time.

18 (Miss Senek excused from the Courtroom.)

19 (Juror No. 20, Maxine Howard, entered the Courtroom.)

20 THE COURT: Miss Howard, you had an
21 opportunity to read that letter, the instructions
22 we gave you? You had an opportunity to read that

1 handout sheet?

2 MS. HOWARD: Yes, Sir, I did.

3 THE COURT: As you know by now, this
4 case is against this lady over here, Miss Roberts.
5 She's charged with two counts of aggravated murder
6 with the specifications. In Ohio, just because
7 someone is found guilty of murdering someone, does
8 not mean that they have to face the death penalty.
9 It is only under certain specific things set forth
10 in the statute. The person who murders a police
11 officer or the Governor, and other things, there
12 are two specifications attached, being aggravated
13 burglary and aggravated robbery, to both of these
14 aggravated murder counts, which raises the specter
15 that if this case would go to a second phase and
16 that means only if Miss Roberts was found guilty of
17 the murder to begin with, then this Jury in that
18 second phase would have to consider the possibility
19 of imposing the death penalty.

20 Some people think that the death penalty
21 should be imposed any time a murder is committed.
22 That is not the law of Ohio. Other people because

1 of religious, moral or ethical considerations, just
2 can't visualize being on a Jury where they have to
3 make that decision or at least consider it. The
4 ideal juror for this trial or any trial similar,
5 would be a person who has some feelings one way or
6 the other concerning the death penalty. We all do.
7 But it has to be people that are able to follow the
8 law. And if they have any personal preference or
9 feeling about the death penalty, that would
10 conflict with them being able to follow the law,
11 then they're duty bound to tell these gentlemen
12 when they are asked, so that that can be taken into
13 consideration.

14 We have had a couple of people here, who
15 did not qualify for this Jury because they answered
16 the questions truthfully, and it avoids them being
17 placed in an unpleasant position. Part of the
18 questioning will be directed towards that issue.
19 Are you able to sit and follow the instructions of
20 law without being bound by some preconceived idea
21 of what the law is or should be?

22 MS. HOWARD: Yes, Sir.

16 MS. HOWARD: Yes, Sir.

18 Q. Good afternoon, Mrs. Howard. How are you?

20 Q. My name is Ken Bailey, I Am assistant

22 Chris Becker, who is here. He had to run

1 out and handle some other things right
2 now. He will be coming back to the
3 counsel table with me. And he's going to
4 be, the two of us are going to be
5 handling this case together. As the
6 Judge indicated, this is the one
7 opportunity that we get to talk together
8 during the course of the trial. And
9 if -- we're going to ask you questions,
10 and if you have any questions about what
11 is going on, that is pertinent to what is
12 occurring here to this trial, feel free
13 to ask them, because once we finish up
14 today, we're not allowed to have any
15 communication with you until the whole
16 case is over, and if it goes into two
17 different phases of the trial, the phase
18 dealing with guilt and non-guilt and the
19 phase dealing with what is the
20 appropriate penalty for this Defendant,
21 we're not allowed to talk to you in
22 between until the whole case is over.

1 So, if we run into each other out in the
2 hallway or on the stairs, we're not being
3 anti-social, it is just we're not allowed
4 to have any communication with you.

5 If you have any questions during
6 that time, you can ask them to the
7 bailiff, who will be in here next week,
8 or Mary Ann, the Court Reporter, or the
9 Judge, but we're not allowed to talk to
10 you. It could result in a mistrial. I
11 want you to understand that. I
12 understand that you get, you read the
13 Warren Tribune and the Youngstown
14 Vindicator, right?

15 A. I wrote that.

16 Q. You read the front page?

17 A. Okay.

18 Q. The Defendant here is charged with a number of
19 crimes. She's charged with two counts of
20 aggravated murder with death penalty
21 specifications and she's charged with
22 aggravated burglary and aggravated

1 robbery with firearm specifications
2 attached. The word "specification," it
3 is just a fancy word that means a special
4 finding of fact for a Jury to consider.
5 So, basically, she's charged with being
6 part of a plan to kill her ex-husband, a
7 guy named Robert Fingerhut. And that she
8 planned with a fellow by the name of Nate
9 Jackson, to kill her ex-husband for the
10 insurance money and stole a car. And
11 that this Nate Jackson broke into a house
12 and committed an aggravated burglary and
13 aggravated robbery, as well as the
14 aggravated murder in this case. Does
15 that ring a bell at all?

16 A. No.

17 Q. It may well be, because you read the
18 Vindicator every day?

19 A. No, Sir. I wrote on there rarely. Hardly
20 ever.

21 Q. But it may well be on those times where you
22 did read it, when you say rarely, how

1 often is rarely?

2 A. I never read the whole front page. I'm not
3 from this area. If I see a name I have
4 heard of, I might read something about
5 that, but I have never read the whole
6 front page. I have only read about names
7 I have heard of, and that may be six
8 times a year at the most.

9 Q. That really is rarely.

10 A. I don't know people really in this area.

11 Q. Do you pay very close attention to the crime
12 news in the paper at all or on T.V. or
13 radio?

14 A. No, Sir, but I do try to listen to news every
15 day, but I work afternoons at work. A
16 lot of times by the time I get to the
17 news, they already gave the top story, so
18 I catch whatever I can.

19 Q. People at work talk about the different crimes
20 in the news?

21 A. If it is somebody who used to work there, that
22 is the only things they bring out.

1 Q. The reason we go through these questions about
2 pre-trial publicity is because as you
3 look around the Courtroom now, there's
4 nobody here from the news media.
5 Occasionally during the course of the
6 trial, you see cameras come in and you
7 see some reporters come in and they may
8 stay for a few minutes, then they write a
9 story, and what is in the paper is based
10 on a couple of minutes here and they miss
11 everything that went on before that and
12 everything that went on after that. So,
13 if you sit on this Jury, you may have
14 somebody save all of the papers for you
15 and read it afterward, and you will say,
16 "Gosh, I sat through that whole trial and
17 that reporter, it was like they were in a
18 different Courtroom. I sat in Judge
19 Stuard's Courtroom and it was like they
20 were in Judge McKay's Courtroom. Because
21 it certainly doesn't reflect what I
22 remember on this case." Because of that

1 possibility for error and on the part of
2 the newspapers and the media, the Judge
3 is going to instruct you not to read the
4 papers or listen to T.V. about this case.

5 A. Sure.

6 Q. Or talk to anybody else. You will get all of
7 your knowledge firsthand from inside this
8 Courtroom.

9 A. All right.

10 Q. Now, the next area that we're going to talk
11 about is your view of the death penalty
12 as a possible punishment. I understand
13 you don't favor the death penalty as a
14 punishment?

15 A. Not as a rule, no. I really don't know that
16 much about law things, and I have never
17 heard all of the facts in any case ever.
18 So I wouldn't have anything to base
19 whether it is something that should be
20 done or not, because I have never had all
21 of the facts on any case.

22 Q. Now, I understand from your questionnaire you

1 are a very religious person. You have
2 worked as a missionary?

3 A. Yes.

4 Q. Where have you worked as a missionary?

5 A. In the Church of God in Christ. You take a
6 task and I am a missionary, but I haven't
7 been overseas or anything like that.
8 Just going different places and helping
9 people.

10 Q. Is there anything in your religious beliefs
11 that prohibits imposing the death penalty
12 as a punishment?

13 A. No one has ever told me if there is.

14 Q. How do you feel personally about it?

15 A. Personally I don't feel -- I don't know. I
16 don't think that it serves as much of a
17 benefit to the person as if they had to
18 live with their mistake or whatever, but
19 I don't know. I'm sure -- I was thinking
20 about, what is it called, death row and
21 sometimes people are on that for so many
22 years. I guess a person would still be

1 able to consider what they had done. I'm
2 sure there are cases where it is
3 necessary, but I don't know. I can't say
4 definitely if I knew more about it, and
5 if there's certain crimes that
6 automatically go with it, I don't know.

7 Q. There's no automatic death penalty?

8 A. Okay.

9 Q. Each case is different, and that is why the
10 legislature in Ohio has set up a special
11 procedure and set up trials to be in two
12 different phases. It is like two
13 separate trials. The first phase of the
14 trial deals with the issue of guilt or
15 non-guilt, whether the Defendant, whether
16 the State can prove the Defendant guilty
17 of this crime of aggravated murder with a
18 death penalty specification. And if we
19 do -- if we do, if we can convince you
20 and the other 11 jurors that the
21 Defendant did what she's charged with
22 doing, these elements of the crime

1 charged that were talked about beyond a
2 reasonable doubt, so that you are firmly
3 convinced of the truth of the charge to a
4 moral certainty, then we would go on to a
5 second phase. And in a second phase, the
6 issue would be different. It wouldn't be
7 guilt or non-guilt. Because you would
8 have already decided guilt. You would
9 have decided the Defendant did do what
10 she's charged with, and so the issue in
11 the second phase would be what is the
12 appropriate punishment for this Defendant
13 for these crimes, or for this crime of
14 aggravated murder, with the death penalty
15 specification.

16 And then you have four different
17 choices. There's the first choice is the
18 death penalty. And if -- and there's a
19 balancing test that would have to be
20 performed. You have read that handout
21 downstairs?

22 A. Right.

1 Q. And they talked about a balancing test, I
2 believe on there a little bit, and what
3 you would have to do is you would have to
4 balance in the second phase, the
5 aggravating circumstance, that the State
6 would have to prove by proof beyond a
7 reasonable doubt that this aggravating
8 circumstance or aggravating
9 circumstances, outweigh any mitigating
10 factors presented by, on the Defendant's
11 behalf. Mitigating factors are things
12 that would work against the death penalty
13 and in favor of the Defendant.

14 A. Okay.

15 Q. I can't tell you what they are at this point,
16 because we don't know. It is not
17 relevant at this point. We're jumping
18 the gun so to speak, but these are things
19 that can be brought on on behalf of the
20 Defendant. And if the State proves the
21 Defendant, that the aggravating
22 circumstance or circumstances outweigh

1 the mitigating factors by proof beyond a
2 reasonable doubt, then you must return a
3 death penalty verdict. You understand
4 that?

5 A. Yes, okay.

6 Q. Would you have any problem with that?

7 A. No, Sir.

8 Q. On the other hand --

9 A. When I read that, I didn't understand it to
10 say what you just said just now. You
11 broke it down better for me.

12 Q. Now let's say the State doesn't convince you
13 beyond a reasonable doubt, that the
14 aggravating circumstance or aggravating
15 circumstances outweigh these mitigating
16 factors beyond a reasonable doubt. In
17 that event, you would go on to consider
18 one of three life sentences; one of those
19 sentences is life in prison without any
20 possibility of parole. The next
21 possibility is the sentence of life in
22 prison with parole eligibility after 30

1 full years, and the fourth option is life
2 in prison with parole eligibility after
3 25 full years. So those would be the
4 options that you have to consider. But
5 you wouldn't get to the life sentences if
6 you found that we proved the aggravating
7 circumstances outweighs the mitigating
8 factors beyond a reasonable doubt. It is
9 not an automatic death penalty if you
10 find the Defendant guilty in phase one.

11 A. All right.

12 Q. Guilty of the crime with a specification. You
13 haven't heard anything in the Defendant's
14 favor until you get to the second phase,
15 right?

16 A. Okay, yes, Sir, I understand.

17 Q. In the first phase, the evidence is all geared
18 towards guilt or non-guilt, did she do it
19 or not. Can we prove it? And in the
20 second phase, you have already decided
21 the guilt, you are looking at what is the
22 right punishment.

1 A. Okay.

2 Q. Now, I understand as an LPN, you are working
3 saving lives, right? You care for them
4 and saving lives?

5 A. Yes.

6 Q. And do you have any problem considering the
7 death penalty as a punishment? It is so
8 different than what you usually do. You
9 usually work to save a life and in the
10 church you are working to save a life,
11 but here you are being asked to consider
12 the taking of a life. Does that cause
13 conflict for you?

14 A. I have never had to do it before, and I don't
15 know -- I'm not saying I wouldn't be able
16 to do it, I'm just saying that I would
17 have to. Everything would have to be
18 weighed out, and you said that with the
19 death penalty, there would have to be no
20 mitigating.

21 Q. It is a balancing test with the death penalty.
22 There may be mitigating factors

1 presented. And then you would have to
2 look at those mitigating factors and you
3 have to look at the aggravating
4 circumstances. The aggravating
5 circumstances here that are charged are
6 that at least there are two
7 specifications of aggravating
8 circumstances that are attached to each
9 of the counts of aggravated murder.

10 And again, there's only one killing,
11 but the State is allowed to proceed on
12 two theories of that killing. That is
13 why we have two counts. Two separate
14 charges of aggravated murder. One of
15 these counts of aggravated murder
16 charges, that it was a purposeful
17 killing, with prior calculation and
18 design.

19 The other count of aggravated murder
20 charges the killing was done purposely in
21 the course of a felony murder, and it
22 occurred during the course of an

1 aggravated robbery and/or aggravated
2 burglary. So two separate types of
3 aggravated murders that are charged. Is
4 that clear?

5 A. For me, I have no idea --

6 Q. What I said?

7 A. Not what you said, about the case period.

8 When you are saying the aggravated
9 robbery.

10 Q. Aggravated robbery and aggravated burglary and
11 the Judge is going to define these terms
12 for you at the end of the case. But
13 basically folks are sometimes confused by
14 these terms of aggravated burglary and
15 aggravated robbery. They use them
16 interchangeably. They have a different
17 meaning in the law.

18 Aggravated burglary is when somebody
19 trespasses in an occupied structure like
20 a dwelling house, and there's somebody
21 inside and the person comes in with the
22 purpose to commit some kind of crime

1 inside, and seriously hurts the person or
2 kills them, and they are armed with a
3 weapon, let's say like a gun.

4 An aggravated robbery would be, on
5 the other hand, it doesn't involve
6 necessarily a house or any type of
7 structures. It involves the use of force
8 or threat by another person to commit
9 some kind of crime, maybe a theft
10 offense, and they have a weapon, and they
11 seriously hurt somebody in the course of
12 doing that of stealing the property.

13 A. In order for the term aggravated to be in
14 front there has to be a weapon; is that
15 what you are saying?

16 Q. Not necessarily a weapon. We have robbery,
17 then we have aggravated robbery. But the
18 Judge will define those terms, and
19 burglary and aggravated burglary. And
20 then there's a little type of burglary
21 called breaking and entering.

22 We have all of these magic terms in

1 the law and each one has certain
2 elements, like the ingredients in a
3 recipe, for each of these. We have all
4 of these different kinds of cakes that
5 we're going to bake. Now, with these
6 aggravated circumstances, that the first
7 specification of an aggravating
8 circumstance attached to the aggravated
9 murder charges, is the aggravating
10 circumstance of an aggravated burglary,
11 that the aggravated murder was committed
12 during the course of an aggravated
13 burglary, breaking into the house with
14 the other parts of the crime, and that
15 the Defendant committed the aggravated
16 murder with prior calculation and design.
17 We used to have a term called
18 premeditation in the law, and they
19 changed that, so it requires some
20 planning and forethought in committing
21 the crime of the aggravated murder.

22 There's a second specification that

1 the aggravated murder was committed
2 during an aggravated robbery, as opposed
3 to the aggravated burglary, and the
4 Defendant committed the aggravated murder
5 with prior calculation and design. So we
6 have these specifications, and you had
7 asked about what happens -- these
8 mitigating factors, so let's say on one
9 side of the scale, we have got these
10 aggravating circumstances. Let's say you
11 and the other jurors have come back
12 finding the Defendant guilty of having,
13 being guilty of the crime of aggravated
14 murder, and one or more of these
15 specifications of aggravating
16 circumstances. And there they are on one
17 side of the scale. On the other side of
18 the scale, the Defendant has an
19 opportunity to present evidence of
20 mitigating factors. Things that work in
21 a Defendant's favor. And then, it
22 doesn't matter how many of these things

1 there are, it is up to you and the other
2 jurors to determine how much weight you
3 wanted to give each of these mitigating
4 factors and how much weight you want to
5 give the aggravating circumstance or
6 circumstances. That is entirely up to
7 you, how much weight to give.

8 And then you are asked to do this
9 mental balancing test. And if you find
10 that the aggravating circumstance or
11 circumstances outweigh these mitigating
12 factors beyond any reasonable doubt, then
13 you have got to come back with a death
14 penalty verdict. If you and the other
15 jurors decide that these mitigating
16 factors, that the aggravating
17 circumstances, don't outweigh these
18 mitigating factors by proof beyond a
19 reasonable doubt, then you have got to
20 come back with one of the life verdicts.
21 And it is up to you, which verdict you
22 think is appropriate for this Defendant.

1 A. Yes, Sir.

2 Q. If I'm not making it really clear, you stop me
3 and I'll try to explain it a little
4 better.

5 A. It is clear.

6 Q. Now, so you understand, you may be called upon
7 to do this balancing test if we get to
8 the second phase. Now, the Defendant is
9 charged here with these crimes, but she's
10 charged as a complicitor. A Complicitor
11 is somebody who solicits or procures
12 another person or aids and abets another
13 person in committing a crime. You are
14 going to find that these crimes were
15 actually committed by a fellow by the
16 name of Nate Jackson. He's the one who
17 really did the killing. He's the one
18 that committed the aggravated burglary
19 and the aggravated robbery. He's the guy
20 that had the gun. And the Defendant is
21 charged not as a trigger man, but rather
22 as an complicitor, somebody who helped

1 him, encouraged him, planned with him, to
2 commit this killing, and these other
3 crimes. Is there anything about that
4 that bothers you?

5 A. You are saying the other, the gentleman that
6 you mentioned, that has already been
7 proven. That is already a case that is
8 done?

9 Q. That is all done.

10 A. I didn't know. Okay.

11 Q. This case stands on its own. Each case stands
12 on its own, and you have got to consider
13 whatever evidence is presented in this
14 Courtroom. We're starting with a clean
15 slate. It is like going back to school,
16 you have got a chalkboard up there and
17 whatever is going to be written on that
18 chalkboard is going to be right here by
19 the witnesses, the physical evidence that
20 comes in and the instructions given to
21 you by Judge Stuard. You can't consider
22 anything else outside this Courtroom from

1 any other trial or anything else.

2 A. That is why I was wondering why his name was
3 brought up. If I'm not supposed to pay
4 attention to anything like that.

5 Q. Whatever is presented is going to be presented
6 in this Courtroom.

7 A. Okay.

8 Q. You may hear about some other proceedings or
9 things, but you are going to have to make
10 your decision based on only what happens
11 here, to give both sides a fair shake in
12 this trial, both the people of the State
13 and the Defendant.

14 A. Yes, Sir.

15 Q. Now, we talk about proof. Well, you
16 understand the burden of proving these
17 elements of the crime are on us, the
18 people of the State. The Defendant
19 doesn't have any burden of proof. The
20 burden of proof is totally on us. And
21 each crime is composed of certain
22 elements. It is like the ingredients in

1 a recipe that I mentioned. I take it you
2 bake?

3 A. Yes.

4 Q. And let's say you are going to bake a cake.

5 What is your favorite cake?

6 A. Carrot cake with pineapple.

7 Q. Let's say you are going to make a carrot cake

8 with pineapple. You have got all of your

9 ingredients, you have eggs and flour and

10 your pineapple and carrots and whatever.

11 You grind them up.

12 A. Grate them up.

13 Q. And you are going to bake it. If you leave

14 out one of those ingredients, if you

15 leave out the carrots, you are going to

16 have a cake, but it is not going to be a

17 carrot cake with pineapple, is it?

18 A. That is right, no, Sir.

19 Q. Just like the ingredients, just like these

20 recipes, we have got the same thing with

21 the crimes, we have got to prove certain

22 key ingredients. We call these key

1 ingredients, elements.

2 Let me give you a for instance and
3 the Judge is going to instruct you at the
4 end of this case on the law, as to what
5 those elements are and you have got to
6 follow the law. With the crime of
7 aggravated murder with prior calculation
8 and design, the State is going to have to
9 show for instance, it happened on or
10 about a certain date, on December 11,
11 2001.

12 Another element might be, it
13 happened here in Trumbull County, Ohio.
14 So we can try this case in this Courtroom
15 rather than in Cuyahoga County or down in
16 Mahoning County.

17 Third element would be
18 identification. That the person who
19 committed this crime is the person who is
20 sitting at that table. Somebody will
21 have to come in and point her out and not
22 somebody else as complicitor.

1 Fourth, that she acted purposely, on
2 purpose, and the Judge will give you
3 detailed instruction as to purpose at the
4 end of this case.

5 Fifth, that she caused the death of
6 Robert Fingerhut. A living person.

7 And six, that she acted with prior
8 calculation and design. Those are, those
9 might be the ingredients of that
10 particular crime. Now if we leave out
11 one of those ingredients, then you got to
12 find the Defendant not guilty of that
13 crime. But if we do prove all of the
14 elements of that crime to your
15 satisfaction, so that you are firmly
16 convinced of the truth of the charge to a
17 moral certainty, using your reason and
18 your common sense because that is the
19 test that is used, and you are used to
20 using reason and common sense?

21 A. Yes, I have to at work.

22 Q. You have to use it at work?

1 A. And in life.

2 Q. Then, if you find the Defendant guilty, if we
3 prove it to your satisfaction, then you
4 have got to find her guilty of that
5 crime. The same thing is true with these
6 specifications and the other charges.
7 Now, there are different ways to prove
8 these elements of the crime. One of
9 these ways is by direct evidence. And
10 that is where a person could come in and
11 testify to what he or she is learning
12 through the use of their five senses.

13 For instance, "I saw the blood and
14 it was red," or "I heard the gunshot, and
15 it was loud," or "I smelled the smoke and
16 it was acrid," or "I touched the body and
17 it was cold." That is one type of
18 evidence. But I think you would agree
19 that when we have serious crimes, most
20 serious crimes aren't committed in public
21 with a whole lot of people around, when
22 people plan serious crimes -- crimes of

1 murder. Those are usually done secretly,
2 where people are sneaking around or
3 talking outside of the hearing of other
4 people.

5 So, you ask yourself, how do you
6 prove what a person intended? You look
7 at their actions, and sometimes, you may
8 look at things like maybe letters that a
9 person has written or phone calls, if you
10 got them, right?

11 A. Right.

12 Q. To see what the person said about what they
13 were planning to do. And we call this --
14 there may be circumstantial evidence.
15 Have you heard that term before?

16 A. Yes, Sir, I have.

17 Q. Have you heard it in a bad context, somebody
18 saying it is only circumstantial
19 evidence?

20 A. I heard it like on Perry Mason.

21 Q. Good old T.V. show. I used to watch all of
22 those. But in those Perry Mason shows,

1 it gave a sort of a distorted view of
2 criminal law, because people would jump
3 up, come in from the back of the
4 Courtroom and say, "I did it," or
5 something like that. In real life, that
6 doesn't happen, all right? But
7 circumstantial evidence, it is where you
8 are given a fact or set of facts and then
9 you are asked to use your reason and
10 common sense and draw a logical deduction
11 to another fact or a set of facts.

12 For example, let's say you will go
13 to bed at night and you live in a two
14 story house and you look out across the
15 neighborhood before you go to sleep and
16 you look out and it is a beautiful night
17 outside, the moon is beaming, the stars
18 are twinkling, not a cloud in the sky.
19 You draw the blinds and just before you
20 go to sleep, you are listening to the
21 radio and the weatherman comes on and
22 says, you know, "We have got a cold front

1 coming in. There's going to be a storm
2 tonight." So, you fall asleep and
3 sometime during the night, you are
4 awakened by a distant booming sound and
5 you look toward the window and even
6 though the blinds are drawn you can see
7 flashes of light coming from outside.
8 And after each flash, a couple of seconds
9 later there's a distant boom, and all of
10 a sudden, there's a big flash like it is
11 right outside and the big boom right over
12 the house and a pitter patter on the roof
13 and heavy drumming. And you fall back
14 asleep and you wake up sometime later,
15 you go to the window and open the blinds,
16 and the sun is shining, not a cloud in
17 the sky. But the streets are running
18 with water. There are drops of water
19 dripping off leaves of the trees. The
20 rooftops across the way are all wet and
21 there's no fire plug nearby where some
22 car could have hit it and squirted water

1 all over the place. You know what
2 happened during the night, don't you?
3 What happened?

4 A. A storm.

5 Q. And you know that beyond any reasonable doubt,
6 right?

7 A. Yes.

8 Q. Your reason and common sense says, "Hey, there
9 was a thunder storm." There's room in
10 there for some possible or imaginary
11 doubt, isn't there? You can imagine that
12 ET and his Martian buddies flew by in a
13 flying saucer overnight, and put on a
14 light show and sprinkled some wet stuff.
15 That would be an imaginary doubt,
16 wouldn't it?

17 A. Yes.

18 Q. You know that all that happened was a thunder
19 storm. That is circumstantial evidence.
20 And you can use circumstantial evidence
21 as well as direct evidence to return a
22 guilty verdict if you believe that it

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1 proves the elements of the crime charged
2 by proof beyond a reasonable doubt. You
3 understand that?

4 A. Yes.

5 Q. You think you can do that?

6 A. Yes, Sir. I never heard it like that.

7 Q. That is different from Perry Mason?

8 A. Very.

9 Q. Now, do you have any questions that about what
10 we're doing, because this is one chance
11 we get to have some give and take. If
12 you have questions about our proceedings,
13 feel free to ask them at this point, as
14 long as it pertains to what we're doing.

15 A. I didn't know before I came that, before I
16 came in this room, and may have been said
17 the other day, the first day, I was
18 trying to hear everything, but I heard
19 you say, sometimes we'll listen, today I
20 heard, I heard you say that she didn't
21 actually do the crime.

22 Q. She didn't pull the trigger. She's charged

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1 with what we call a complicitor, somebody
2 who solicited or procured another person,
3 aided and abetted him, strengthened him,
4 encouraged him to commit the crime.

5 MR. INGRAM: I respectfully object
6 to the assertion that she's involved. She's
7 allegedly involved.

8 BY MR. BAILEY:

9 Q. That is a charge, she's charged with allegedly
10 being involved.

11 A. You are saying the death penalty can apply to
12 a complicitor?

13 Q. As long as we prove the elements of the crime
14 and the specifications.

15 A. Okay.

16 Q. So the death penalty occurs only -- can be
17 applied only, it is a possible penalty
18 only if we prove the crime of aggravated
19 murder and the specification that I
20 mentioned. One of those two
21 specifications of aggravating
22 circumstances, and that she's a

1 complicitor, that she purposely engaged
2 with prior calculation and design in this
3 killing.

4 A. Okay.

5 Q. Now, because crimes are committed in secret, I
6 think you would agree that all criminals
7 aren't the brightest people in the world.
8 They are not rocket scientists. For
9 example, you have heard on T.V. or radio
10 or read where a criminal has gone in a
11 bank to rob it and handed over an
12 envelope with a holdup note written on
13 it, and then he leaves with the money and
14 well, they turn the envelope over, it has
15 got his name and address on it, because
16 it was sent to him; or a burglar who
17 breaks into the house and he left his
18 wallet behind at the scene of the crime.

19 A. No.

20 Q. Or the criminal who goes into the bank to
21 commit the crime and he's not wearing a
22 mask and they catch him on the video

1 cameras and then they publish his picture
2 everywhere. All criminals aren't the
3 brightest people, right?

4 A. No.

5 Q. And they get caught sometimes because of that.
6 Now I notice you had written on your
7 questionnaire about innocent people being
8 found guilty. Have you experienced any
9 actual cases of that?

10 A. No, not of anyone that I know personally, but
11 I am from Columbus, Ohio and there was a
12 doctor years ago and he was in prison for
13 like 11 years, and then they found this
14 person that looked just identical to him,
15 I don't know how many years later, right
16 after that, then he was freed and that is
17 the only case I really know of.

18 Q. That would have been a terrible injustice for
19 that person?

20 A. Right.

21 Q. The other people, you think that all people
22 who are convicted of crimes are

1 wrongfully convicted?

2 A. I think I have wrote on that, that thank God
3 it rarely happens, and it does. It
4 rarely happens. I certainly don't think
5 that all people are wrongfully charged.

6 Q. Do you think that your concern about that
7 doctor, or any other cases that you might
8 have read or heard about, would affect
9 your ability to render a guilty verdict
10 in this case if we can prove to you, the
11 Defendant is guilty of the crime charged?

12 A. No.

13 Q. You said that you had taken a position against
14 the death penalty in the past. When was
15 that?

16 A. I think the question prior to that or
17 somewhere in there asks if there was ever
18 a discussion with a person, just in
19 talking, I don't know who I was talking
20 to. I was probably in Columbus and I
21 know people have asked different times,
22 "What do you think?" It might have been

1 on my job or whatever. I certainly, I
2 would not agree to a death penalty
3 without the facts. I have never had the
4 facts in any situation. I only had like
5 one person's point of view, so I think it
6 makes a difference when you have all of
7 the facts.

8 Q. Let's say you had all of the facts. For what
9 type of crime do you think the death
10 penalty might be an appropriate penalty?

11 A. If I could say the first thing to my mind,
12 President Saddam Hussain, or somebody
13 like I guess a person who kills like
14 multiple people, but you still have to
15 have all of the facts. I would have to
16 just automatically say because they
17 killed ten people, and this person only
18 killed one, a life is a life. I would
19 need the facts still.

20 Q. And when you say you need the facts --

21 A. I still am not certain of all of the terms
22 used, like mitigating factors and

1 circumstantial evidence.

2 Q. Aggravating circumstances.

3 A. All of that. Not just a blanket thing if
4 somebody killed ten people, they should
5 die, I don't think that.

6 Q. That's the way the law is written in the State
7 of Ohio, if you come back with a guilty
8 verdict in the first phase finding the
9 Defendant guilty of aggravated murder
10 with one of those specifications, you
11 understand the death penalty is not an
12 automatic punishment?

13 A. Yes.

14 Q. Because you wouldn't have heard anything about
15 mitigating factors. And you wouldn't
16 have anything to balance at that point.
17 And it is only after you hear the second
18 phase of the trial, where there would be
19 facts that could be presented in favor of
20 the Defendant against the death penalty,
21 that you would be able to vote. You
22 understand that?

1 A. Yes.

2 Q. You had indicated on your questionnaire, you
3 said if a person says they are innocent,
4 I believe them. Would that, is that a
5 religious belief or personal belief?

6 A. All of my life. I just have believed in
7 people. If a person says they didn't do
8 it, I just believed them, but I never had
9 but one side of the story, either.

10 Q. Let's say you are going to be on this Jury.
11 You are called upon to judge the
12 credibility of witnesses. The Judge will
13 instruct you as to the test that you are
14 going to use, but it is the same test
15 that you use in your every day life. You
16 have raised kids?

17 A. Yes.

18 Q. And there are times where your kids have come
19 in and said, "I didn't do it," but you
20 knew they did it, right?

21 A. Yes.

22 Q. You could tell by the way they were acting and

1 all of the evidence around, to either
2 what you saw with your own eyes or the
3 circumstantial evidence that was there,
4 maybe breaking a vase or something like
5 that or a lamp, or taking something that
6 wasn't there's or something like that.
7 The things that kids do, because we raise
8 kids and it is part of growing up?

9 A. Right.

10 Q. So, like how would you know if your son wasn't
11 telling you the truth?

12 A. Because my son is the only one I had a problem
13 with. I never had problems with my
14 daughters. He really didn't not tell the
15 truth, but I would end up at these places
16 and I would have to answer for him. I'm
17 trying to think if it would be the way he
18 looked. He would looked ashamed. He
19 wouldn't look me in the eye. He wouldn't
20 say he didn't do it or did do it. He
21 wouldn't look me in the eye and just have
22 his head down.

1 Q. You knew he did it?

2 A. I knew he did it.

3 Q. Like at work, you can tell if somebody is
4 telling you the truth or not at work?

5 A. Yes.

6 Q. If something, if you are asking him about
7 something. And it is the same test that
8 you use in your every day life to
9 determine the test of the believability
10 of the witnesses who are going to
11 testify. I take it you are not going to
12 believe everything a witness says
13 automatically, just because a witness
14 says something happened and because they
15 are under oath?

16 A. No, I'm not.

17 Q. You understand you can believe all of what a
18 witness says, some of what a witness
19 says, or none of what a witness says.
20 But it is up to you and the other jurors
21 to decide if they were telling the truth.

22 A. Okay.

1 Q. And that is something you are going to be
2 asked to do probably. If you hear from
3 witnesses if they are telling the truth
4 and how much you want to believe. You
5 think you could do that?

6 A. Yes, Sir, I could do that.

7 Q. Now, you understand you can't go out to the
8 scene to investigate on your own. This
9 happened out in Howland. And the only
10 time you can go there is if you are
11 conducted on a view with the rest of the
12 jurors of the scene by the bailiff in the
13 custody of the bailiff. But it would
14 cause a mistrial if you were to go out
15 and do an investigation on your own.

16 Sometimes in the movies, they have
17 jurors going out and investigating, maybe
18 Perry Mason, but that is a big no-no.
19 You can't do that. We had a case where
20 that happened, you and just can't do that
21 because it would cause a mistrial.

22 A. Okay.

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1 Q. Now, during the course of the trial, you are
2 going to be face to face with the
3 Defendant and perhaps during the course
4 of the trial as her chair is turned
5 towards you, you are going to become more
6 acquainted with her. My question to you
7 is this. When you go inside the Jury
8 room to deliberate on your verdict, can
9 you set aside all thoughts you might have
10 of sympathy for this Defendant, and base
11 your deliberations and your verdict on
12 the testimony that you hear from the
13 witnesses, the physical Exhibits that are
14 admitted, and the instructions of law
15 given to you by the Judge, and lay aside
16 all thoughts of sympathy for this
17 Defendant whatsoever? Can you do that?

18 A. I can do that.

19 Q. It is only natural to feel sympathy for
20 people, but we have to set that aside
21 when we're considering something in a
22 Court of law?

1 A. Yes, Sir, I can do that.

2 Q. Now there's going to come a time at the end of
3 the first phase, where the Jury is going
4 to go out to deliberate and you are going
5 to be sequestered. That means you are
6 not allowed to go home. You are put up
7 at the hotel like the Judge says, if it
8 takes that long, and each Jury is
9 different. Some Juries may take a couple
10 of hours, some Juries may take a couple
11 of days or a week. You will take as long
12 as necessary to deliberate to reach a
13 verdict.

14 A. Yes, Sir.

15 Q. Let's say you and the other jurors reach a
16 verdict of guilty of aggravated murder
17 with one or more of these specifications
18 in the first phase. We go on to a second
19 phase. You would go home in between, and
20 then we would come back from like a
21 second trial dealing with this issue of
22 punishment. And then you would hear

1 testimony, and then you would go out to
2 deliberate again and you would be
3 sequestered for a second time. And
4 again, it is up to the Jury to determine
5 how long you are going to be out
6 deliberating. Would that cause any
7 inconvenience for you?

8 A. No.

9 Q. Are there any other pressing matters at home
10 or work that you think are going to
11 affect your ability to concentrate on the
12 evidence here?

13 A. None.

14 Q. Would you agree that serving on a Jury is one
15 of the obligations of citizenship in this
16 country, to make our system work?

17 A. Yes, Sir.

18 Q. You understand we have certain obligations as
19 citizens, if it is election time, we're
20 called upon to vote if we can, to go out
21 and learn as much as we can on the issues
22 and the candidates and cast a ballot.

1 Another obligation is war time. We may
2 be called to serve in the military, we
3 have got young people overseas in a
4 couple of countries today serving in war,
5 as an obligation of citizenship. And
6 this other obligation is if we're
7 summoned in as jurors, if we're able to
8 serve, it is important that we have
9 people come from all walks of life in the
10 community to serve on a Jury. Will you
11 be willing to undertake that obligation
12 of citizenship?

13 A. As being --

14 Q. A juror?

15 A. Yes.

16 Q. It is a difficult thing when we ask you to
17 consider whether a -- to consider whether
18 a person is guilty of an aggravated
19 murder with these specifications, and it
20 is even more difficult when we ask you to
21 consider the death penalty as a possible
22 punishment, because the death penalty is

1 not applied in all cases of homicide. It
2 is in certain cases sought out by the
3 legislature where it becomes a possible
4 penalty. Do you think that you would be
5 able to live up to that obligation, and
6 return a verdict that is properly based
7 on the evidence?

8 A. Based on the evidence, yes, Sir.

9 Q. Any questions you have for me at this point?

10 A. No, I don't.

11 MR. BAILEY: Thank you for your
12 candid answers and the Defense Attorneys will have
13 an opportunity to address you.

14 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
15 OF HEARING)

16 THE COURT: How long did you have to
17 wait today? Were you downstairs all afternoon?

18 MS. HOWARD: Since 1:30.

19 THE COURT: We're going to have you
20 come back on Monday morning because you are only
21 half done. We'll commence at 9:00 on Monday, and
22 probably take about another 45 minutes to an hour

1 and you will be done. We thank you for your
2 attendance today.

3 (Juror No. 20 excused from the Courtroom.)

4 MR. BAILEY: On the record, we have
5 got one thing we have to put on. I talked to my
6 boss and that we had an offer that was out. We're
7 going to hold that open until Monday morning, then
8 we're going to revoke it. We'll probably keep
9 another offer open with consecutive time after
10 that, but we have a deadline on our current offer.

11 MR. INGRAM: I don't know why you
12 had to put that on the record, but it's on record.
13 Now Mr. Bailey has chosen to go on the record, I
14 believe it is improper for him to Voir Dire jurors
15 on the fact that a Defendant in another case has
16 been convicted. If it comes up of its own, that is
17 one thing, but for the Prosecutor to tell a
18 prospective juror that another Defendant has been
19 convicted is improper.

20 MR. BAILEY: I don't think I used
21 the term convicted. The case was disposed of.

22 MR. INGRAM: How about found guilty?

1 MR. BAILEY: I thought I said the
2 case was disposed of.

3 THE COURT: It is a question of what
4 relevancy it has at this point in this case at all.
5 It is a fact that there's a co-defendant, and that
6 is going to come up at some point in time on the
7 Prosecution's case. I guess it is more the form,
8 you can argue semantics on the thing. What is your
9 preference for the Defense on any reference to
10 that?

11 MR. INGRAM: If a juror brings it
12 up, then we simply have to deal with it to the
13 extent that we affirmatively either one of us bring
14 up that case, it is something that I guess has to
15 be proven just like anything else.

16 THE COURT: The point is, I am
17 rather surprised we have had two of these people
18 that said they didn't know anything about the case.
19 I tend to believe them, but in questioning those
20 who do have some prior knowledge of it, I don't
21 know how you avoid the prior conviction.

22 MR. INGRAM: Neither do I.

1 THE COURT: I agree with you, it
2 should not gratuitously be brought up by the
3 Prosecution. There's no point to that, but I think
4 that it is something that is going to be an
5 integral part of the Voir Dire to some degree or
6 another.

7 MR. INGRAM: I agree with you, but
8 for this particular juror, it was not.

9 THE COURT: She had no knowledge of
10 it. I agree with that. Mr. Bailey, you will act
11 accordingly, Sir?


12 MR. BAILEY: Yes, Sir.

13 THE COURT: You all have a nice
14 weekend.

15 (Court in recess at 4:35 p.m.)
16
17
18
19
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21
22

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.


MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

1020

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

5 STATE OF OHIO) VOLUME V
6))
7 Plaintiff) INDIVIDUAL VOIR DIRE
8))
9 - vs -))
10))
11 DONNA M. ROBERTS))
12))
13 Defendant))

14 BE IT REMEMBERED, that on Monday, April 14,
15 2003, these proceedings came on to be heard before
16 one of the Judges of this Court, John M. Stuard,
17 in Courtroom No. 2, on High Street, Warren, Ohio,
18 before the case heretofore filed herein.

19 Mary Ann Mills, RPR
20 Official Court Reporter
21 Trumbull County, Ohio
22

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I N D E X

VOLUME V:

(Monday, April 14, 2003)

Individual Voir Dire:

Maxine Howard (Continuing exam)	1023
George Dermer	1071
Douglas Jones	1155
Lisa Jaskowiak	1171
Karen Tipton	1172
Walter Dawson	1255

1 Monday, April 14, 2003; In Open Court at 9:30 a.m.:

2 THE COURT: You had something for
3 the record, John?

4 MR. JUHASZ: On Friday, the State
5 did their examination of the prospective juror,
6 Miss Howard. Mr. Bailey also mentioned on the
7 record at the end of the day that the plea bargain
8 offer, which had previously been made would be
9 revoked as of today. Although Mr. Ingram and I
10 have had meetings with Miss Roberts. He has asked
11 for permission to be excused from the questioning
12 this morning of Miss Howard, so he's back in the
13 Jury room going over some things with Miss Roberts.

14 In an effort to keeping things going
15 because Friday we had two jurors excused, so we
16 didn't make a lot of progress. We would,
17 therefore, waive Miss Roberts' presence for the
18 purpose of examination of this juror and ask that
19 Mr. Ingram be excused for the same reason.

20 THE COURT: Fine. Any objection to
21 that?

22 MR. BAILEY: No objection, Your

1 Honor.

2 THE COURT: That motion is granted
3 then. It has been requested by co-counsel,
4 Mr. Juhasz, that your presence and Miss Roberts' be
5 excused for this first -- for the next prospective
6 juror. And just for the record, Miss Roberts, are
7 you in agreement with that?

8 THE DEFENDANT: Yes, Sir.

9 THE COURT: Thank you.

10 MR. INGRAM: We do request your
11 indulgence in that.

12 THE COURT: Sure. No problem.
13 Thank you.

14 (Juror No. 20, Maxine Howard entered the Courtroom.)

15 THE COURT: For the record, this
16 witness of course has been -- or prospective juror
17 has been previously questioned by Mr. Bailey.

18 EXAMINATION BY MR. JUHASZ OF MS. HOWARD:

19 Q. Good morning. How are you?

20 A. Fine. Thank you.

21 Q. Last Wednesday, Judge Stuard had all of us
22 introduce ourselves and my name is John

1 Juhasz, one of the lawyers who is
2 representing Donna Roberts. Because we
3 are, as the Judge says, we have kind of
4 run you around, there are sometimes more
5 than one thing going on at the same time.
6 So because of that, Mr. Ingram and Miss
7 Roberts are actually in another room
8 going over a couple of things. They are
9 actually in Court, but not in the
10 Courtroom. Did you get a chance to see
11 Miss Roberts the other day when you were
12 here or maybe last Wednesday when you
13 were first called?

14 A. Yes, Sir.

15 Q. I know that you told Mr. Bailey and the Court
16 on Friday that you had not read or heard
17 anything about the case. Was there
18 anything about her face or figure that
19 looked familiar to you that sort of
20 brought anything back?

21 A. No.

22 Q. As far as you know, you know nothing about

1 Miss Roberts or about any of the lawyers
2 or about the case whatsoever?

3 A. No.

4 Q. One of the reasons that we do this, that we
5 take the time to question jurors
6 individually is because this is a serious
7 case and everybody on all sides of the
8 case take the responsibility very
9 seriously. It is a little bit like a job
10 interview, except that instead of you
11 applying for the job, we sort of sent you
12 an invitation called a Petit Jury
13 Summons. And as you and I talk a little
14 bit this morning, if there's anything --
15 lawyers are accustomed to asking
16 questions, because we try to keep things
17 moving along, but I don't want you to let
18 me put any words in your mouth. If
19 there's something that pops into your
20 head that you think we should talk about
21 relating to your willingness or ability
22 to serve as a juror, I want you to stop

1 me so we can talk about.

2 A. Sure.

3 Q. Mr. Bailey told you on Friday that this is the
4 only chance during the whole case that we
5 actually get to talk to each other or
6 with each other, is the best way to say
7 it. After that, the lawyers can only
8 talk to you, they can't listen to
9 anything from you. If something comes
10 up, you will let us know?

11 A. I will. Something came up over the weekend.

12 Q. Tell me about that.

13 A. I know that I can't -- well, I won't say that
14 part. I felt bad because I said
15 something on Friday that I don't believe
16 in, but it just came out. The
17 Prosecutor, I don't remember everybody's
18 names yet, he asked me what crime did I
19 think deserved the death penalty, and I
20 said a name, and I was wrong in that,
21 because I don't know anything about him.
22 I said Saddam Hussain. I don't believe

1 that, because no one has put any evidence
2 in front of me about him and I'm sorry
3 that I said that. I think his name was
4 just in my brain, but that wasn't the
5 question. I was asked about a crime, I
6 don't know what his crime is and I gave
7 his name. I just felt bad that I said
8 that, because I don't believe that,
9 because I don't know anything about him.
10 That is all.

11 Q. I appreciate you telling us about that. One
12 of the things that I sensed from your
13 answer on Friday is that, and again,
14 don't let me put words in your mouth, I
15 want to try to make this move along, is
16 that you are a person who doesn't
17 necessarily think the death penalty
18 accomplishes much, but we do it as part
19 of the law, and if you were going to vote
20 to impose it, you would want to be really
21 certain about the guilt of the person?

22 A. Absolutely.

1 Q. And if I am reading you right, that is one of
2 the reasons why you now bring up
3 President Saddam Hussain. Although
4 there's been coverage about what he's
5 supposed to have done, you yourself have
6 not heard any evidence?

7 A. I have not.

8 Q. Even though you are a person who generally has
9 the opinion that the death penalty
10 doesn't accomplish much and I think you
11 said on Friday that sometimes a life
12 sentence might be better because it gives
13 the person an opportunity to sit around
14 and think about their mistakes. Am I
15 recounting what you said Friday
16 accurately?

17 A. Yes.

18 Q. But there are circumstances where if you felt
19 that the evidence warranted it, that is
20 if you were convinced about the person's
21 guilt in the first phase, you could
22 consider imposing the death penalty in

1 the second phase, correct?

2 A. Yes, Sir, I could.

3 Q. Are you pretty clear on -- I am sort of
4 glossing over that, are you pretty clear
5 on what we do in the first phase and what
6 we do in the second phase?

7 A. I'm not really clear.

8 Q. Let's talk about that for a second. The first
9 phase of a trial like this is really just
10 like any other criminal trial and we're
11 going to talk in a few minutes about the
12 burden of proof and things like that.
13 But it is like any other criminal trial.
14 That is, evidence has to be presented and
15 the Jury has to decide, did the State
16 prove that this person is guilty beyond a
17 reasonable doubt of what the State says
18 he or, in this case, she did. In the
19 second phase, if you get that far, it is
20 more or less a sentencing type of phase
21 and so what you will be asked to weigh
22 and consider are on the one hand -- and

1 I'm going to tell you the fancy names and
2 I'll tell you what they really mean for
3 people that aren't lawyers.

4 On the one hand, you are asked to
5 weigh what the law calls the aggravating
6 circumstances. And that is just a fancy
7 lawyer name for reasons to consider
8 imposing the death penalty. And you are
9 asked to weigh those against on the other
10 hand, what the law calls the mitigating
11 factors or the mitigation evidence, and
12 that is really things, reasons to
13 consider for not imposing the death
14 penalty.

15 A. Okay.

16 Q. So, even though we say fancy things like you
17 will be instructed at the second phase to
18 weigh the aggravating circumstances
19 against the mitigating factors and decide
20 if the aggravating circumstances outweigh
21 the mitigating factors by proof beyond a
22 reasonable doubt, that is stuff that

1 lawyers say. What it really means is
2 that you are going to have to do -- is
3 you are going to have to take the reasons
4 that are given to you for considering
5 imposition of the death penalty, and
6 weigh them against reasons that are given
7 to you not to impose the death penalty.
8 And if you are firmly convinced that the
9 reasons to impose the death penalty
10 outweigh the reasons not to, then you
11 vote for death, otherwise then you don't,
12 because the State hasn't met that burden
13 of proof that it has at the second phase.
14 Is that helping a little bit?

15 A. It does.

16 Q. In the first phase I know that you don't know
17 much at all or maybe anything at all
18 about what it is that the State is
19 claiming, but the allegations are
20 basically these. Donna Roberts, our
21 client, and the man who died in this
22 case, a fellow by the name of Robert

1 Fingerhut had once been married. They
2 divorced, but after they divorced, they
3 continued to live together over in
4 Howland and they also continued to work
5 together at the Youngstown and Warren
6 Greyhound bus stations. The State's
7 allegation is that Miss Roberts and
8 another fellow by the name of Nate
9 Jackson got together and came up with an
10 idea to kill Mr. Fingerhut.

11 Now, some of the evidence that you
12 might hear the State introduce in the
13 first phase when they are deciding if
14 what I just repeated to you is those
15 allegations are true, are some letters
16 and telephone conversations and recorded
17 telephone conversations between Donna
18 Roberts and Nate Jackson. Some of those
19 honestly are sexually explicit and
20 offensive. And the reason I bring that
21 up is there are things that would offend
22 just about anybody with normal

1 sensibilities and you strike me as that
2 kind of person. So, what I need to find
3 out from you when we're deciding on
4 whether you are able to do this job, even
5 if you are offended by those things, do
6 you think you could set that aside and
7 say, "I have to decide objectively
8 whether or not the State proved this
9 case, not convict this person because she
10 said or did some things that were
11 offensive to me." Do you think you could
12 do that?

13 A. Yes.

14 Q. Even though we have gone through all of this
15 hoopla thus far, which is bringing you in
16 last Wednesday and having you fill out
17 all sorts of questionnaires, and I think
18 you have to hold the record probably for
19 having to come back to Court for a number
20 of times to be questioned, even though we
21 have gone through all of that, the first
22 phase of this trial is really like any

1 other criminal trial, which is you have
2 to decide whether the State met its
3 burden of proof.

4 My question to you is, if the State
5 does not meet its burden, even though we
6 have gone through all of this, would you
7 still have the ability or the courage to
8 say, "Sorry, they didn't prove it. I
9 vote not guilty?"

10 A. Yes. Excuse me, would you say that one more
11 time?

12 Q. Here's the reason I ask. Sometimes, and you
13 know what, let's go back to Saddam
14 Hussain for a second. That is a pretty
15 good example. There's been so much
16 hoopla about the war in Iraq, about the
17 weapons of mass destruction before that,
18 about his use of chemical weapons and all
19 of the publicity that you have heard,
20 that you actually said it accurately,
21 even though there has been all of those
22 going-ons, you haven't heard any evidence

1 yet really, hard evidence about whether
2 this guy is guilty of what people say he
3 did.

4 A. Right.

5 Q. On a much smaller scale, we have sort of had
6 the same kind of hoopla here. Even
7 though you haven't been exposed to it,
8 there's been some publicity. We have
9 gone to the special effort to bring in a
10 whole bunch of extra jurors as Judge
11 Stuard said last week. We made you fill
12 out lengthy questionnaires, that we don't
13 ordinarily make jurors do. We're going
14 through this process of talking to you
15 individually, which we also don't
16 normally do. And my question to you is,
17 just because we have gone through all of
18 that, if when you finally hear the
19 evidence if you say, "You know what, we
20 went through all of this, but the State
21 didn't produce enough evidence to
22 convince me she's guilty," would you

1 still have the courage to say, "I'm going
2 to vote her not guilty. I'm going to
3 find that she's not guilty"?

4 A. Yes. I thought I understood that the first
5 time. I wanted to be sure.

6 Q. That is fine. I'm going to talk for a second
7 about the difference between this case
8 and an ordinary criminal case. In this
9 case, in addition to criminal charges of
10 aggravated murder and aggravated burglary
11 and aggravated robbery, the type of
12 charges we might have in any criminal
13 case -- in this case, there are also what
14 are called death specifications. They
15 are allegations that in addition to an
16 aggravated murder, there was something
17 else that happened, that if you as a
18 juror find that to be true, that is what
19 really makes this case eligible to go to
20 the second phase, to decide whether or
21 not you should vote for the death
22 penalty. Now, I want to use an example

1 that really doesn't have to do with our
2 case, to sort of explain my point. One
3 of the reasons that the General Assembly
4 in Ohio has said that an ordinary
5 aggravated murder might be elevated to
6 the death penalty considerations if you
7 kill the Governor. So, if the person is
8 charged with killing Bob Taft, then if
9 the State wanted to get the death
10 penalty, let's just say that I am the
11 person who is charged. I sort of always
12 make myself the bad guy in these
13 examples. Let's say I'm the guy who is
14 charged and they say, "Look, Mr. Juhasz
15 thought about this. He planned it out.
16 What we call prior calculation and design
17 and he killed Bob Taft. Those are our
18 allegations against him. But, we also
19 want you, ladies and gentlemen, to
20 consider the death penalty for him and so
21 we're making an additional allegation
22 that when Juhasz killed him, Bob Taft was

1 the Governor of the State of Ohio." That
2 is the special circumstance, because
3 otherwise, if I just kill a guy named Bob
4 Taft, even though his job at the time
5 happens to be Governor of the State of
6 Ohio, if the State doesn't ask for you as
7 the Jury to make that separate finding
8 that I was the Governor, then I can't get
9 the death penalty.

10 A. Okay.

11 Q. Let's just go forward a little bit to the
12 trial and let's just say that they have
13 me cold. They got 15 witnesses and three
14 confessions and seven video tapes, all of
15 which show me planning and shooting a guy
16 named Bob Taft. Now, even though you
17 don't know anything about this case, you
18 know that Bob Taft is the Governor of the
19 State of Ohio?

20 A. Yes.

21 Q. Let's say that and in my imaginary
22 circumstance, it would be up to the

1 State, I don't know who you think would
2 prove it, they might come in with some
3 certified certificate with ribbons and
4 seals dripping off of it, saying this
5 guy, Bob Taft was sworn in as the
6 Governor of the State of Ohio on such and
7 such a date, or they might call Thomas
8 Moyer, the Chief Justice of the Supreme
9 Court that says, "That guy in the
10 photograph dead, is the person I
11 personally swore in as the Governor of
12 the State of Ohio." Let's say, however,
13 they forgot to do that. They just either
14 forget or maybe they rely on the fact,
15 that hey, you know, Bob Taft is the
16 Governor. You see in that circumstance,
17 let's go back to what we were talking
18 about evidence before. You may have
19 found me guilty based on evidence.
20 Confessions and witnesses, and all of
21 that stuff I talked about of the
22 aggravated murder, but when you go back

1 in the Jury room, you go, "Wait a minute.
2 The Judge told me I had to decide this
3 case based on the evidence in the
4 Courtroom. I may know Bob Taft is the
5 Governor, but these guys didn't prove to
6 me. They didn't bring in the certificate
7 or they didn't bring in Tom Moyer, so I
8 am therefore going to find that
9 Mr. Juhasz is guilty of aggravated
10 murder, but not guilty of the
11 specification that Bob Taft was the
12 Governor. He may have been, but they
13 didn't prove it to me." Do you see how
14 that works?

15 A. Okay.

16 Q. Some people might regard that -- many times
17 when we talked to jurors, one of their
18 difficulties with the legal system is
19 they have problems with what they call
20 technicalities. Would you regard that as
21 a technicality or do you understand that
22 the burden of proof is on the State of

1 Ohio, and if they fail to meet it, your
2 job as a juror is to say, "I have to find
3 this person not guilty either of that
4 offense or that specification." Do you
5 think you can do that?

6 A. Yes, Sir.

7 Q. And my silly imaginary example, would you have
8 any problem finding me guilty of
9 aggravated murder, but finding me not
10 guilty of the specification that Bob Taft
11 was the Governor?

12 A. Yes, because that wasn't proven. That wasn't
13 brought into Court.

14 Q. Now, one of the things that I think that, in
15 my years of talking to jurors, that I
16 think jurors would really like, when we
17 bring them into a Courtroom like this, is
18 they had like some help. You know what,
19 you have never had to decide, you have
20 never had to apply before in your life,
21 have you, the standard of proof beyond a
22 reasonable doubt?

1 A. No, Sir.

2 Q. You have probably heard that phrase before,
3 but you never had to actually use it
4 yourself, correct?

5 A. Never.

6 Q. And I suspect that like most jurors who come
7 in here, you want to do a good job if you
8 are selected as a juror and do the fair
9 thing?

10 A. Yes, absolutely.

11 Q. Part of the problem with our system is that, I
12 shouldn't say part of the problem, part
13 of the nature of it is because we're not
14 dealing necessarily with things
15 scientific. We're dealing with things
16 like witnesses and whether you believe
17 them or not and how many witnesses might
18 be available based upon the
19 circumstances.

20 So, my point is that the Judge can't
21 give you a formula. He can't give a
22 definition and say, "Look, if the State

1 produces "x" number of witnesses, then
2 you have to find the Defendant guilty
3 beyond a reasonable doubt, but if they
4 only produce Y number of witnesses, then
5 they haven't proved the case." It
6 doesn't work like that. Do you see that?

7 A. Yes, Sir.

8 Q. The reason I am bringing that up is because
9 there are several things that you would
10 have to do as a juror, if you are
11 selected in this case, and although the
12 Judge will give you some guidance, it is
13 ultimately up to you to decide. Those
14 include weighing the credibility of
15 witnesses.

16 The Judge will give you some tests
17 and I think you are going to find out
18 that those tests that he gives you are
19 basically the same ones that you use in
20 your every day life in deciding whether
21 somebody is telling you the truth.
22 Because an astute person, I am assuming

1 you realize that not everybody that talks
2 to you tells the truth 100 percent of the
3 time. You also don't assume just because
4 somebody comes and takes an oath to tell
5 the truth, they may not be telling the
6 truth all the time, even though they took
7 the oath, correct?

8 A. Yes, Sir.

9 Q. Part of your job is to decide whether those
10 people are telling you the truth at all,
11 completely, or maybe some of it is the
12 truth and none of it is the truth. And
13 although as I said, the Judge can give
14 you some help and give you some tests
15 that you can use, that in the long run
16 has to be your call as a juror; do you
17 think you are up to that?

18 A. Yes, Sir.

19 Q. You are also -- he's going to define for you
20 proof beyond a reasonable doubt. But as
21 I told you before, he's not going to be
22 able to give you any sort of numerical

1 formula. So while he's going to define
2 it for you, you are ultimately going to
3 have to make the decision, did the State
4 prove its case beyond a reasonable doubt.
5 Do you think you are up to that?

6 A. I'm sorry. Ask that again, please.

7 Q. The Judge is going to give you the definition
8 of proof beyond a reasonable doubt. But
9 when you go back into the Jury room and
10 talk with the other jurors, you have to
11 make a decision that you, as an
12 individual juror, are comfortable with.
13 Did the State prove its case beyond a
14 reasonable doubt? And do you think you
15 are up to doing that?

16 A. Yes, Sir.

17 Q. There's also a little aspect of that, which is
18 that the law requires in a criminal case
19 that all 12 of the jurors agree. And of
20 course, we all like them to, but the
21 phrase that should get added to that is
22 "if you can." The reason I bring that up

1 is, and it doesn't matter which side you
2 are taking. We can do it both ways.
3 Let's say the other 11 jurors say, "The
4 State proved its case beyond a reasonable
5 doubt," and you say, "Sorry, I have
6 doubts based on reason and common sense.
7 I can't vote guilty just because I like
8 you people or just so I want to be nice
9 and we can get done with our business
10 here." Do you think you have the ability
11 to hold out if you are put in that
12 position?

13 A. Yes, if I don't have enough evidence for me.

14 Q. And it works the other way, too. Let's say
15 the other 11 go, "Hey, we don't think the
16 State proved its case." And you go,
17 "Well, I sure do." And you guys talk
18 back and forth. They might say to you,
19 "Look, 11 of us think she's not guilty,
20 you are the only one. Can we just get
21 out of here? Will you vote not guilty?"
22 Your oath requires that you can't do

1 that. You can't give up your convictions
2 about what the evidence either shows or
3 doesn't show. You think you can do that?

4 A. I can do that.

5 Q. And if you get to a second phase, although we
6 can give you those definitions and
7 instructions I talked about before, about
8 weighing the reasons to impose the death
9 penalty against reasons not to impose the
10 death penalty, the ultimate decision
11 about how you weigh that is finally up to
12 you. Nobody -- we can tell you how to
13 weigh the evidence, how to do it, but
14 what weight you actually assign to that
15 evidence is your individual judgment. Do
16 you see that?

17 A. Yes, Sir.

18 Q. And you think you are up to that?

19 A. Yes, Sir.

20 Q. We talked a little while ago about if you were
21 offended by some of the letters that are
22 shown to you or some of the tape recorded

1 phone conversations that are played for
2 you, that while it is okay to be
3 offended, you can't let that affect how
4 you decide the case. You are okay with
5 that, correct?

6 A. Yes, Sir.

7 Q. You may also in a case like this, feel
8 sympathy for somebody and it depends on
9 the circumstances, and it depends on your
10 background. You may feel sorry for the
11 Defendant as I think Mr. Bailey said the
12 other day. You are sitting in the Jury
13 box, she's sitting over here, you are
14 kind of looking at each other through the
15 course of the trial. You may ultimately
16 end up feeling some sort of sympathy for
17 her. You may feel sympathy for Mr.
18 Fingerhut because you would expect in a
19 case like this, that you would be shown
20 photographs of him dead. That makes
21 sense to you, correct?

22 A. Yes.

1 Q. You may feel sorry for him or for members of
2 his family. All of those things are
3 okay, because nobody asks you to stop
4 being a human being when you take on the
5 responsibilities of being a juror. But,
6 part and parcel of taking on those
7 responsibilities is saying, "Okay, I
8 recognize that I feel sorry for her, for
9 him, whoever, but can I set that aside
10 and not let that cloud how I objectively
11 look at the evidence?" Do you think you
12 could do that?

13 A. I could do that.

14 Q. Have you ever heard before the phrase, "Taking
15 the Fifth"?

16 A. Yes, Sir.

17 Q. Does that mean anything particular to you?
18 Some people have a definition of that.
19 Some people don't.

20 A. I can't remember. I have the right -- I don't
21 remember. "I have the right to remain
22 silent on the grounds that it may

1 incriminate me."

2 Q. That is right.

3 A. Perry Mason.

4 Q. That is exactly right. And the Fifth, I'll
5 help you out a little bit since I have
6 wasted the flower of my youth studying
7 this stuff. The Fifth is actually --
8 when they say taking the Fifth is
9 actually the Fifth Amendment to the
10 United States Constitution. And part of
11 that Fifth Amendment says that you have a
12 right as a citizen, not to incriminate
13 yourself. You had it exactly right.
14 What the Courts have translated to over
15 the years, instead of we're going to give
16 this any practical application is that a
17 person who is accused of something, some
18 wrongdoing by the Government, a crime,
19 has a presumption of innocence. They
20 don't have to do anything to help the
21 Government prove them guilty in this
22 case. So that means in a variety of

1 context that first of all, if a police
2 officer wants to talk to somebody, you
3 don't have to answer any questions that
4 are going to incriminate yourself, which
5 is probably the thing you are most
6 familiar with. It also means though in a
7 trial like this, that when the Government
8 says you as a citizen, in this case,
9 Donna Roberts, did something wrong, the
10 Government has to prove it. And so
11 because of that Fifth Amendment, Donna
12 Roberts doesn't have to do anything in
13 this case. She can sit over there
14 literally or figuratively and fold her
15 arms and say, "You guys brought this case
16 against me. You have to prove it, if you
17 can."

18 One of the ways that I like to think
19 about that is since you don't have any
20 formulas that we give you, like if
21 there's this much evidence, she's guilty
22 and if there's only this much evidence,

1 she's not, is that you have to sort of
2 pour the evidence that the Government
3 gives you into a box. Up on that box,
4 you have to draw a line called reasonable
5 doubt. And if the evidence that the
6 Government gives you during the course of
7 this trial persuades you that the box is
8 filled up beyond the line called
9 reasonable doubt, because it is proof
10 beyond a reasonable doubt, then you would
11 have to find the Defendant guilty. But
12 conversely, if when you get done, when
13 you go back in the Jury room and you sort
14 of close your eyes and say, "Let me do
15 this imaginary box thing," and you close
16 your eyes and you think about the
17 evidence they have given you, and you
18 say, "It doesn't come up to the line."
19 Therefore, even though they have produced
20 some evidence, they haven't convinced you
21 beyond a reasonable doubt. Do you see
22 that?

1 A. Yes.

2 Q. Now, the reason I like to use that example is
3 because of the Fifth Amendment
4 presumption of innocence, when we start
5 the trial the box is empty. It has
6 probably been mentioned to you, I can't
7 recall, but we're here because the Grand
8 Jury issued a piece of paper called an
9 Indictment. Have you heard that word
10 before?

11 A. Yes, Sir.

12 Q. And an indictment is another one of those
13 fancy legal words that doesn't mean
14 anything so complicated. It is a piece
15 of paper where the Government says to a
16 person, "We think you did something
17 wrong. Now, come to Court." You don't
18 have to do anything once you get there,
19 because of the Fifth Amendment. We have
20 to do everything. Here's again why I
21 like to use that box.

22 First of all, that indictment is not

1 evidence. Just like all of the things
2 that you have heard about Saddam Hussain
3 are not evidence. Those are allegations
4 that people are making, but if he's to
5 ever come to trial, somebody is going to
6 have to produce some evidence that he did
7 that. Does that make sense to you?

8 A. Yes.

9 Q. In this case, the indictment is not evidence
10 and because you haven't heard any
11 evidence if I sent you back into that
12 Jury room right now to look in that
13 imaginary box, it would have to be empty.
14 Would you agree?

15 A. Yes.

16 Q. The reason that I also like to use the box is
17 empty is because although it is typical
18 that most of us want to hear both sides
19 of a story, to be fair, if somebody makes
20 an allegation against you, you would want
21 to have the opportunity to say, "Wait a
22 minute. That is not true and let me tell

1 you why." Correct?

2 A. Right.

3 Q. It works a little bit different in a criminal
4 trial, however, because of this
5 presumption of innocence, the State is
6 charged with the responsibility of
7 pouring the evidence into the box. And
8 so it isn't a situation where the
9 Defendant wins the case or loses. It is
10 a situation where the State wins the case
11 or loses. They win the case, if in your
12 mind, they fill up the box beyond the
13 line called reasonable doubt. They lose
14 the case if they don't put any evidence
15 in the box at all, like that thing I told
16 you about with the Governor, remember
17 that? Or if they put some evidence in,
18 but you as a juror say, "Sorry, nice try,
19 but you didn't fill up the box beyond the
20 line called reasonable doubt." Do you
21 see how that works?

22 A. Yes, I do.

1 Q. And I like to use the box because the
2 Defendant, because of the presumption of
3 innocence, doesn't have to take anything
4 out of the box and doesn't have to pour
5 anything into the box herself. You see
6 how that works?

7 A. Okay. I didn't know that.

8 Q. And it runs a little bit contra to what we as
9 fair people like to do in ordinary life.
10 You have got some children, and I assume
11 are very proud of them, because they have
12 accomplished a lot. When they were
13 growing up, I'll bet you that from time
14 to time, one came and said the other one
15 did something bad, correct?

16 A. I didn't have those kind of kids. They were
17 unusual. I didn't have that situation.

18 Q. You were incredibly lucky.

19 A. Brothers and sisters, but not children.

20 Q. If your brother or sister accused you of
21 something, you certainly would want a
22 chance to get to make a response,

1 correct?

2 A. Yes.

3 Q. And you wouldn't want your Mom or Dad or
4 whoever was making the decision about
5 whether you had done something wrong and
6 if so whether you should be punished,
7 until they heard both sides of the story,
8 correct?

9 A. Right.

10 Q. You see this presumption of innocence thing,
11 because it puts the burden of proof on
12 the State, works a little bit different.
13 So, the Defendant in a case like this
14 might not have to testify. Do you see
15 that? Because if she makes a decision,
16 "Listen, I don't think these guys have
17 filled up the box. I don't have anything
18 to say." She can do that.

19 Now my question is, if that happens
20 in this case, would you hold that against
21 her or would you recognize that is just
22 part of the way the presumption of

1 innocence works?

2 A. I would recognize that.

3 Q. And let's flip it around, because even though
4 she has the right not to testify, she
5 also has the right to testify. So if she
6 does, you see that she's just like any
7 other witness in the case? You would
8 judge -- remember how we talked about
9 believability or credibility before? You
10 would judge her believability just like
11 you would any other witness, correct?

12 A. Right.

13 Q. You wouldn't automatically disbelieve
14 everything she told you just because she
15 was the person charged in the case. That
16 would not be fair, would it?

17 A. No.

18 Q. You may choose to disbelieve her, but you
19 wouldn't do it just because she's the
20 Defendant in the case?

21 A. No. I wanted to make sure, because I never
22 heard this before. The Defendant doesn't

1 have to prove anything, so you never get
2 two sides of the story, is that what
3 you're saying?

4 Q. You may not. There are cases where it
5 happens. Where the Defendant testifies
6 or the Defendant calls witnesses or both.
7 But, because of that presumption of
8 innocence, because it is up to the
9 Government to fill up that box, she may
10 not.

11 And let me digress for a second and
12 give you an example that I sometimes like
13 to use with jurors, and again, I am the
14 Defendant. I am the bad guy and the
15 charge is that at the corner of Market
16 Street and Pine Avenue here in Warren, on
17 January 1 at 4:00, the charges are that I
18 got out of my car, walked up to somebody
19 else's car and shot the guy. So now we
20 come to the trial and the State calls a
21 witness who says, "January 1st, 4:00,
22 there I was, Market Street and Pine

1 Avenue, I saw that guy, Juhasz, walk up
2 and shoot that person." And now, that is
3 not looking so good for me right then.
4 They got a witness who says he's there at
5 the time and place and under the
6 circumstances, and he gets a good look at
7 me and he points me out in the Courtroom
8 as the guy who did the shooting. It is
9 not looking so good for me, is it?

10 Let's pretend that I hired Ben
11 Matlock, and I like to use him, because
12 he always pulls stuff out of his pocket,
13 instead of stuff out of a folder, and he
14 stands up on cross examination of a
15 witness and he reaches into his pocket
16 and he pulls out a receipt from
17 Kaufmann's in the Southern Park Mall in
18 Boardman for January 1st at 4:00, and
19 says, "Mr. Witness, isn't it true that on
20 that date, you were buying the new navy
21 blue suit at Kaufmann's?" And the guy
22 looks at the things and says, "Yes, that

1 is true." Now, the case is looking a lot
2 better for me now, isn't it? Because all
3 of a sudden the State's witness who
4 looked like I was going to be toast, has
5 now been impeached or cross examined and
6 there's a pretty good suggestion here
7 that the witness wasn't at the corner
8 here, but he was down at the Southern
9 Park Mall 25 miles from here. You see
10 that?

11 A. Yes.

12 Q. The reason I bring that story up is because in
13 the course of a case, the Defendant --
14 what in essence that did was, if you had
15 looked into that box after the witness
16 got done answering the Prosecutor's
17 questions, that box would be pretty full
18 or close to it, right? Because they got
19 somebody who is putting me there. Now,
20 based upon what the Defendant did, what
21 my lawyer, Ben Matlock did, maybe when
22 you look in the box you say, "There's a

1 little bit of evidence in there, but it
2 doesn't look too good to me." You see
3 how that works?

4 A. Yes, Sir, I do.

5 Q. So, the Defendant by what she does, may affect
6 how you look at the evidence in the box,
7 but if she doesn't think that the
8 evidence is filling up the box, she
9 doesn't have to do anything. That is how
10 that whole thing works. Does that help
11 you out now?

12 A. Yes, it does. Thank you. I am more familiar
13 with the term beyond a shadow of a doubt.
14 Is that television?

15 Q. That is just television. At least as far as I
16 have always known, it is always proof
17 beyond a reasonable doubt. Now, and that
18 is really one of the last things that we
19 need to talk about.

20 The State has to prove its case
21 beyond a reasonable doubt. It doesn't
22 have to prove its case beyond a shadow of

1 a doubt. It doesn't have to prove its
2 case as the Judge will tell you beyond
3 possible or imaginary doubt. He's going
4 to tell you at the end of the case that
5 everything which is the subject of human
6 affairs, that is things that we're doing
7 as we move around this planet, is subject
8 to some possible or imaginary doubt.

9 Here's a way that I like to think
10 about that or ask jurors to think about
11 it. When you have made important
12 decisions in your life, whether you have
13 done it on a piece of paper as some
14 people do or maybe in your mind's eye,
15 don't you sort of weigh out the pros and
16 the cons? You put the pros on one column
17 and the pros on another. Well, you have
18 to do the same thing here, when you are
19 deciding whether the State prove its case
20 beyond a reasonable doubt. On one side,
21 maybe all of the reasons why the
22 Government will tell you that you should

1 find Donna Roberts guilty of the crimes
2 they have charged her with, and guilty of
3 those specifications.

4 On the other side would be all of
5 the doubts that you might have about the
6 case. And the doubts can essentially
7 come from several sources. They may be
8 as you listen to the evidence yourself,
9 things that you said, that doesn't quite
10 sit with me. So it could be stuff you
11 thought of yourself. It could be things
12 that Mr. Ingram and I point out to you
13 during the course of the case, either in
14 cross examining witnesses or making a
15 closing argument to you, or it could be
16 things that have popped up when you and
17 the other 11 jurors go back to deliberate
18 and talk about the case. Because that is
19 one of the things you do is talk about
20 the evidence. So, those are the basic
21 areas where you could get those doubts
22 from.

1 Now, what you have to do, weighing
2 the pros and the cons, is to say, "Well,
3 here are the reasons they tell me why I
4 should find this person guilty. Here are
5 the things that I have come up with," or
6 the jurors have come up with or the
7 lawyers have come up with. These are the
8 doubts about the case. You have to then
9 analyze each one of those doubts and talk
10 about it with the other jurors and think
11 about it, and maybe when you get done
12 talking about it, you say, "You know
13 what, I thought that was a legitimate
14 doubt, but now that I think about it,
15 that doubt is not reasonable." So you
16 scratch it off. If you go through and
17 scratch off every one of those doubts as
18 not being reasonable or based on common
19 sense, then the State has proved its
20 case, because here were all of the doubts
21 that you had and none of them were
22 reasonable.

1 If on the other hand, when you got
2 done, there was one doubt or could be
3 more than one, that was left on that side
4 of the check list, and you have talked
5 about it and you have thought about it,
6 and you have argued about it with the
7 other jurors and you go, "No, there's no
8 way that I can account for that doubt
9 other than to say, in my mind, it is
10 based on reason and common sense." Then
11 do you see in that circumstance, because
12 you haven't eliminated all of the doubts
13 based on reason and common sense. The
14 State has not proved its case beyond any
15 reasonable doubt. Does that work for
16 you?

17 A. Yes, Sir.

18 Q. So, my question is, can you hold them to the
19 burden of proving the case beyond a
20 reasonable doubt but not beyond the
21 shadow of a doubt?

22 A. Yes, Sir.

1 Q. That same standard would apply in the second
2 phase if you get there. Which is when
3 you sit down in the first phase, the pros
4 are going to be reasons to find her
5 guilty and the cons are going to be
6 reasons, doubts that you might have or
7 reasons to find her not guilty.

8 In the second phase, you are
9 weighing something else. You are
10 weighing reasons to impose the death
11 penalty versus reasons not to.

12 Similarly, the State would tell you at
13 the second phase, on this check list,
14 here are all of the reasons why we say
15 you should vote for the death penalty.
16 And you, or the jurors or Mr. Ingram and
17 I would give you reasons not to impose
18 the death penalty. Once again, the
19 State's burden of proof has to be beyond
20 a reasonable doubt. So, if after you
21 talk about it you eliminate all of the
22 doubts on that side of the check list and

1 say, "None of them are based on reason
2 and common sense," then the State has met
3 its burden. If on the other hand, you
4 have one or more than one doubt about
5 whether death is the appropriate penalty,
6 then they haven't proved their case
7 beyond a reasonable doubt. Are you okay
8 with that?

9 A. Yes, Sir.

10 Q. Any problem holding the State to that burden
11 of proof?

12 A. No, Sir. I was just thinking. I wanted to
13 make sure I understand the word
14 reasonable. Reasonable in this Court
15 means reason and common sense?

16 Q. The Judge will actually -- what I tell you is
17 not the instructions of law. It is just
18 what we're used to dealing with as
19 lawyers. We have heard those instruction
20 a million times and so that is why we can
21 talk about the words. But if you ever
22 have any problems about what the actual

1 definition is, Judge Stuard reads them to
2 you at the end of the case. But in
3 general, that is what we're talking about
4 is reason and common sense.

5 A. Okay.

6 Q. Any problem applying those standards we have
7 talked about, burden of proof, beyond a
8 reasonable doubt, any problem with the
9 presumption of innocence? Do you have
10 any problem presuming that Donna is
11 innocent right now?

12 A. No. Everything you say, I say to myself,
13 reason and common sense.

14 Q. Any problem holding the State to that burden
15 of proof in the first phase?

16 A. No, Sir.

17 Q. How about if we get to the second phase? Any
18 problem holding them to that burden of
19 proof there?

20 A. No.

21 Q. Anything that is coming up while I have been
22 questioning you, that you think we should

1 talk about, about questions you have or
2 maybe reasons you thought of why you
3 couldn't or shouldn't serve as a juror in
4 this case?

5 A. I can't think of any.

6 Q. Do you think you can serve as a juror in this
7 case?

8 A. I think I can serve as a juror.

9 MR. JUHASZ: Thank you for your
10 time.

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
12 OF HEARING)

13 THE COURT: You are going to be in
14 the pool from which this Jury will be selected.
15 Call that number this Friday after 4:30. You will
16 receive further instructions. The 36 that are
17 picked will be brought back and then we'll actually
18 select the Jury from that body of people. I would
19 again remind you not to read anything in the
20 newspaper or have any discussion with anybody or
21 watch anything on T.V. until you return. We thank
22 you for your time.

1 (Juror No. 20 excused from the Courtroom.)

2 (Juror No. 22, George Dermer, entered the Courtroom.)

3 THE COURT: Good morning Mr. Dermer.
4 You read that handout that was given to you?

5 MR. DERMER: Yes.

6 THE COURT: The purpose of this
7 inquiry this morning is to allow both sides an
8 opportunity to ask you some questions primarily
9 aimed at two different areas. You understand that
10 Donna Roberts is charged by indictment with two
11 counts of aggravated murder with specifications.
12 Under the law of Ohio, the unlawful taking of
13 another person's life, murder, is not something
14 that automatically puts a Defendant in the position
15 of the death penalty, facing the death penalty. If
16 there are specifications attached, however, and one
17 of the examples that is often given is if a person
18 would murder Bob Taft and the State put on as a
19 specification that he's Governor, then that would
20 bring up the issue of the death penalty. The same
21 thing applies with killing a police officer or
22 other reasons.

1 In this particular case, there are other
2 specifications attached to the indictment charging
3 her with aggravated murder, which raises the
4 specter of the death penalty being considered.

5 Now the State has the burden of proving
6 beyond a reasonable doubt all of the elements of
7 the aggravated murder charge and the specifications
8 attached. Should the State fail to do that, then
9 the Jury would make a finding of not guilty and
10 that would be the end of the case. Should,
11 however, the State carry the burden of proof, then
12 this Jury would be called upon to sit in a second
13 phase of the trial in which the State has an
14 opportunity to present what are known as
15 aggravating circumstances. And those are reasons
16 why the Jury should consider the death penalty or
17 impose it. The State has to do that beyond a
18 reasonable doubt. At that same second hearing, the
19 Defendant has an opportunity to present mitigating
20 factors, and those mitigating factors are reasons
21 why the Jury should consider not imposing the death
22 penalty. So the Jury has to at that second phase

1 weigh the aggravating circumstances against the
2 mitigating factors in order to determine whether
3 they will in fact impose the death penalty or
4 impose one of three other lesser penalties of life
5 without chance of parole and then two lesser from
6 that even.

7 There are those among us who believe in
8 the old Testament of an eye for an eye. If you
9 murder somebody, you forfeit your life. That is
10 not the law of Ohio. There are people on the other
11 extreme who feel that they could never participate
12 in any activity where a person's life may be in
13 question. Everyone is entitled to their own
14 opinion, but in between those two extremes, you
15 have the majority of the population, who have
16 feelings one way or the other on the question of
17 the death penalty. Some feel it is not a very good
18 idea, but at times might be called for.

19 Others feel more strongly that it should
20 be granted more liberally. But the perfect juror
21 is someone who could give the assurance to these
22 folks that no matter what their personal ideas are

1 about the death penalty, that they will be able to
2 follow the law as it is.

3 The Court will give an instruction of
4 what law has to be followed. And to have an
5 adequate Jury we must have 12 people who are able
6 to follow the law, setting aside their own ideas of
7 what the law should be. Otherwise, if that isn't
8 done, one side or the other can't get a fair trial.

9 So, the questions will be put to you
10 concerning your thoughts on the death penalty,
11 whatever your thoughts are. As I say, you have a
12 right to those opinions and they will be respected
13 by everybody here.

14 The other issue is whether or not you
15 have, by reading or seeing something about this
16 case, have fixed opinions that you are not able to
17 set aside. Again, in order for both sides to
18 receive a fair trial here, each juror will have to
19 be able to decide this case on the evidence, and
20 that evidence will only be presented in this
21 Courtroom. So, if a person were on the Jury and
22 they hear the evidence and that doesn't square with

1 something they thought might be the facts, they
2 have to follow the facts as presented here. Any
3 questions about that?

4 MR. DERMER: No.

5 THE COURT: Mr. Bailey?

6 EXAMINATION BY MR. BECKER OF MR. DERMER:

7 THE COURT: I'm sorry, Mr. Becker.

8 Q. Is it Mr. Dermer?

9 A. Yes, that is right.

10 Q. Good morning, Mr. Dermer. My name is Chris
11 Becker. I work for the County
12 Prosecutor's Office and this is
13 Mr. Bailey. He's involved in this case
14 also with the State. He's what we call
15 the first chair or the lead counsel. I
16 am assisting him. This is Mr. Ingram and
17 Mr. Juhasz and this is the Defendant in
18 this case, Donna Roberts.

19 One of the things that we're going
20 to try and do here is this is really the
21 only opportunity that we get to speak
22 directly to you and you can ask us

1 questions and we can ask you questions,
2 and we can try and explain things and as
3 best we can here, because once we get 12
4 jurors and if you are one of the 12
5 jurors and you get to sit over here in
6 the juror box, we can't ask you questions
7 and you can't ask us questions. Once we
8 start this case and the Court says,
9 "Okay, you call your first witness," and
10 we start calling witnesses, we can't lean
11 over to you and say, "Hey, Mr. Dermer,"
12 or you can't conversely -- you can't talk
13 to us and say, "I got a question about
14 something in this case." So, it is
15 really important that we get to know you
16 and I realize we have a very short period
17 of time here to get to know you, but it
18 is important that we get your thoughts
19 and your ideas about this case.

20 And what we're trying to do is find
21 out if you are the right juror for this
22 particular case. Both the State is going

1 to try to do that and they are going to
2 try to do that. And we may find that for
3 whatever reason, you are or you aren't,
4 that doesn't mean you are not a good
5 juror, doesn't mean you are not a good
6 person. It just means we can't get you
7 on this particular case or we can't use
8 you in this case.

9 So, with that in mind, and by all
10 means, if you have any questions or if
11 I'm not explaining something clearly,
12 say, "Wait a minute. You are going to
13 have to re-explain that or give me
14 another idea." Or if you have questions
15 that come up in your mind by all means
16 stop me and say, "I have a question about
17 this." With that in mind, let's start on
18 the first issue.

19 I think pursuant to your
20 questionnaire you indicated that you do
21 believe the death penalty is an
22 appropriate penalty in certain cases,

1 correct?

2 A. I do.

3 Q. And the fact that you believe in the death
4 penalty in this case, means that you may
5 be a prospective juror, that you would
6 not say, "I don't believe in it, I could
7 not under any circumstances impose the
8 death penalty," because ultimately, and
9 we're going to talk about something in
10 the law here. It is one of those strange
11 cases where we're actually going to have
12 two trials here and we may only have one,
13 but we may have two phases to this trial.
14 And we have to be a little presumptuous
15 here with you and assume we're going to
16 get to that second phase, even though we
17 may never get there.

18 You and your fellow jurors may find
19 that there's no reason to get to that
20 phase because she's innocent, she's not
21 guilty. And you may get to this point,
22 and you may not get to this point, but

1 like I said, when I started out, we can't
2 go through the first phase and then you
3 find her guilty and then all of a sudden,
4 say, "I got some concerns about the death
5 penalty," or "I have some questions about
6 the death penalty." Once we start, we
7 can't speak to you again. It is
8 important that we go through the whole
9 length of this trial and both stages to
10 determine if you could sit as a juror in
11 this case.

12 So, with that in mind, we're going
13 to take some liberties here. We're going
14 to assume we have gone through this first
15 phase and you found her guilty. You may
16 not find her guilty, and then we may all
17 go home, but let's say we get to this
18 phase and we get through the first part
19 where she's found guilty and you find
20 what is called in the indictment and the
21 Court will explain all of these terms for
22 you, that she's committed murder,

1 aggravated murder, with some -- what we
2 call aggravating circumstances. And I'm
3 not going to explain what those are to
4 you because that will really be what the
5 Court's job is. Then we're going to come
6 back in a couple of days if we get to
7 that point and we're going to have the
8 mitigation phase of the trial. And
9 basically, what that is and just to be
10 over simplistic, is we're going to say as
11 the State and the Prosecution, that some
12 bad things happened and these are bad
13 things that make her eligible to get the
14 death penalty.

15 The Defense is going to present to
16 you and may present to you, a lot of good
17 things, things that maybe would tip the
18 scale. They don't have to, but they may
19 present to you some things throughout
20 this trial. It is always going to be the
21 State's burden. We always are going to
22 have to prove to you beyond a reasonable

1 doubt.

2 Now, I can't really quantify it, and
3 I can't really tell you what it is,
4 because every person is going to have a
5 different view of reasonable doubt, and
6 the Court is going to give you a term,
7 that is not really quantified. The Court
8 is not going to say, "Well, if you are 80
9 percent convinced or 90 percent
10 convinced," reasonable doubt is just
11 reason and common sense. It is not all
12 doubt and it is a little bit like a cup
13 of water or pitcher of water. You may
14 say an inch or two from the top for
15 reasonable doubt, someone else maybe an
16 inch and a half. Someone maybe a quarter
17 of an inch from the top. It is not all
18 the way to the top is reasonable doubt,
19 but it is pretty close to the top, and
20 where that is, is going to vary for
21 different people and it is a heck of a
22 lot more than 50 percent. It is probably

1 a heck of a lot more than 75 percent, but
2 where it is, whether it is 85, 89, 90, 95
3 percent, 99 percent. That is going to
4 vary from juror to juror. It is
5 basically, are you firmly convinced based
6 on reason and common sense?

7 But when we get to this point where
8 we're having this second phase, we're
9 going to have to again prove to you and
10 your fellow jurors that beyond a
11 reasonable doubt she deserves to get the
12 death penalty, and we're going to present
13 some evidence to you. They may or may
14 not have to present evidence to you.

15 But you are going to get four
16 choices basically if we get to that
17 second phase. You are going to get
18 death. You will get life with no parole,
19 you will get life with no parole after 30
20 years, and life with no parole after 25
21 years. Those will be your four choices
22 and you and your fellow jurors will have

1 to agree to that, and go back to that
2 Jury room and sign a verdict form,
3 calling for one of those four penalties.

4 And I want to make certain and I'm
5 sure the Defense does to, if we get to
6 that point, you are not going to
7 automatically impose a certain penalty,
8 are you?

9 A. No.

10 Q. You will balance and weigh the factors and the
11 circumstances as the Court gives them to
12 you. You will do this balancing test?

13 A. Yes.

14 Q. And I realize it is presumptuous and we can't
15 tell you what the evidence is in this
16 case, but first of all, if the case did
17 prove beyond a reasonable doubt that the
18 aggravating circumstances outweighed any
19 mitigating factors that she were to
20 present to you, could you go back to the
21 Jury room and sign a piece of paper, a
22 verdict, that calls for the imposition of

1 the death penalty?

2 A. Yes.

3 Q. And on the other side of that coin is, if we
4 don't prove beyond a reasonable doubt
5 that the aggravating circumstances
6 outweigh the mitigating factors, you
7 would consider the other options and in
8 fact, if we didn't prove it, you couldn't
9 consider the death penalty, correct?

10 A. Yes.

11 Q. And you understand that balancing test. I
12 hope I have explained it to you. Do you
13 understand what I'm asking you?

14 A. Yes.

15 Q. I know we're kind of talking about terms that
16 I'm sure we don't use every day in our
17 normal lives, because they are legal
18 terms, but you believe that you could
19 fairly and impartially consider whether
20 the death penalty should be imposed in
21 this case?

22 A. Yes.

1 Q. You are not so convinced and so much in favor
2 of the death penalty that you would say,
3 "Well, she killed somebody. It is an eye
4 for an eye, she's involved in the
5 homicide. Therefore, I have to give her
6 the death penalty"?

7 A. No.

8 Q. And again we're being very presumptuous,
9 because we may never get to that point.
10 The next thing that you touched upon was
11 that you have heard some of this in the
12 paper and the television, is that
13 correct?

14 A. Yes, I have.

15 Q. While we like to have jurors come in here and
16 know the community, one of the reasons
17 you were selected is because you are
18 involved in this community. You are a
19 voter. You are a registered voter, who
20 actually exercises their right to vote.
21 We also can't have people coming in here
22 with such a mindset that they have

1 already made up their minds.

2 Now I understand the television and
3 media and the newspapers and the radio,
4 they report things and if you are
5 interested in your community, which
6 obviously, I am and you are as well, you
7 are going to read things, and obviously,
8 when you read about this case, or saw it
9 on television months and months ago, you
10 had no idea you were going to be here?

11 A. No, I didn't.

12 Q. And my question to you is do you have such an
13 opinion of this case, of this particular
14 Defendant that you can't set those
15 opinions -- first of all, do you have an
16 opinion about her guilt or innocence as
17 you sit here right now?

18 A. No.

19 Q. You have read a lot and seen a lot on
20 television about this case, correct?

21 A. I don't know what you mean by a lot. I have
22 seen some.

1 Q. When you sat down and I think it says you
2 said, "What I saw on T.V. and read in the
3 paper." Let's say you were watching the
4 news one night and they said, "Donna
5 Roberts is accused of complicity because
6 she's" -- she's not accused of actually
7 pulling the trigger and shooting this
8 deceased individual Robert Fingerhut.
9 You are not going to say, "Well, I read
10 the paper and boy, it sounds bad for her,
11 and as soon as I read that article, I
12 knew she was guilty. There's no doubt
13 about it. It was in the paper, or it was
14 on television, why would they show it if
15 she wasn't guilty?" You don't believe
16 that, do you?

17 A. No.

18 Q. Have you formed an opinion about this case,
19 about whether she's guilty or innocent?

20 A. No.

21 Q. So you don't have anything really in terms of
22 coming in here and saying, "There she is,

1 she's the one I saw on television. She's
2 guilty"?

3 A. No.

4 Q. And the real question, I guess here is and
5 there's a lot of different ways of saying
6 this. What we want you to do is what the
7 Court wants you to do and myself and
8 Mr. Ingram and Mr. Juhasz is, we want you
9 to come in here and if you are selected
10 for this Jury, only determine whether
11 she's guilty or innocent based upon what
12 you hear in this Courtroom, not what you
13 read in the newspaper, what you have seen
14 on television. And in fact, the Court,
15 if you are picked as a juror in this
16 case, will tell you not even to read the
17 newspaper and don't watch anything about
18 this case as it unfolds during this
19 trial. So, you believe that you have not
20 formed an opinion, whether or not it was
21 from the media, the television, the
22 newspaper that you could sit there and be

1 a fair and impartial juror?

2 A. I think I could be fair and impartial.

3 Q. Another way of approaching this, I guess is,
4 if you were the Defendant in this case,
5 would you be satisfied with a juror such
6 as yourself, someone who may have read
7 something about it? But you wouldn't
8 say, "I don't know about this guy, he's
9 read the newspaper, seen the television
10 in stories, boy that really bothers me."
11 You really feel that you could be honest
12 and impartial and fair and impartial in
13 this case?

14 A. Yes, I do.

15 Q. Now you have already indicated that you know
16 some of the things about this case. In
17 fact, there were some letters written
18 from prison. You indicated that and I am
19 assuming you are basing that either from
20 television stories or newspaper articles?

21 A. Yes.

22 Q. And you are also aware that there is in this

1 case, a co-defendant, a Mr. Nate Jackson,
2 and you know he was involved in this case
3 and he was charged and found guilty of
4 murder. In fact, he received the death
5 penalty, correct?

6 A. Yes, I do. I was told that a couple of days
7 ago, just a few days ago about the death
8 penalty.

9 Q. Was that prior to you being notified you were
10 a juror on this case or how did you find
11 that out?

12 A. I believe it was that morning in the paper,
13 when I was supposed to come in that said
14 he was already found guilty.

15 Q. When you came in that morning, you didn't know
16 you were going to be called for this
17 particular Jury. You happened to read
18 the article that day and when they
19 started talking to you and you said, "I
20 just read about that in the paper"?

21 A. Yes.

22 Q. That article, and knowing what you know that

1 in fact he has been convicted and
2 received the death penalty, you will be
3 able to separate that out from this case,
4 correct?

5 A. Yes.

6 Q. The fact that he's been convicted and the fact
7 that he's been given the ultimate penalty
8 would have no bearing on you determining
9 Miss Roberts' guilt? First of all, her
10 guilt, because we have got to get over
11 that first hurdle; and second of all, if
12 you do get over that hurdle, what penalty
13 you may give her, correct?

14 A. Yes.

15 Q. Now, we talked a little bit about reasonable
16 doubt, and what reasonable doubt is in
17 any particular case. In this case, we
18 have to prove, the State has to prove
19 each and every element of the crimes that
20 are charged by proof beyond a reasonable
21 doubt.

22 And basically that is breaking it

1 down even further. There's five or six
2 little elements to each and every crime.
3 Some have seven, some have five, some
4 have four; but each crime has an element,
5 and one of the first elements that is
6 almost always involved in any case, is
7 that the crime was committed in this
8 jurisdiction, and this jurisdiction,
9 obviously is Trumbull County. If we were
10 to present to you all of the other
11 elements, the fact that it was a
12 homicide, it was aggravated murder, it
13 was committed during the course or
14 commission of say a burglary or robbery,
15 and that the offense involved the death
16 of another, it was complicity that we
17 proved that she aided and abetted another
18 in committing this offense. But we
19 failed to have one witness come in here
20 and say, "All of this happened in
21 Trumbull County, Ohio." What would your
22 verdict have to be if we failed to

1 present to you one of the elements of
2 those crimes?

3 A. I don't know what you mean.

4 Q. We have to prove to you, we have to prove to
5 you first of all, that there was a death.
6 We have to prove to you that it was, that
7 it was committed -- well, there's
8 actually a couple of different theories
9 in this case, but one of the crimes is
10 we'll have to prove to you, that it was
11 planned, what we call premeditated murder
12 was committed. It was planned and
13 thought out. I don't want to get into
14 the legal definitions. We have to prove
15 to you certain things, obviously there
16 was a death, that somehow it was planned,
17 it was committed during the course of
18 either an aggravated robbery or
19 aggravated burglary, and we have to prove
20 that it was committed here in Trumbull
21 County, Ohio.

22 Let's say we get four out of those

1 five elements or whatever. Three out of
2 four. But we never mention, we never
3 have one person or one document that says
4 to you that this happened in Trumbull
5 County, Ohio. Let's say the coroner
6 doesn't say that he found this body here
7 in Trumbull County. None of the police
8 officers say that the body was found in
9 Trumbull County. We present no evidence
10 to that. Your verdict would have to be,
11 as much as you may not like it, it would
12 have to be not guilty, right?

13 A. I don't know.

14 Q. I'll tell you that it would have to be. You
15 would have to do that, and the reason, I
16 guess, that you have to do that, is
17 because every person has -- every person
18 is presumed innocent until they are
19 proven guilty. You understand that
20 concept?

21 A. Yes.

22 Q. So, if the Judge asked you or if I asked you

1 right now, "Is Donna Roberts guilty of
2 anything?" Your answer would be what?

3 A. No.

4 Q. And you may not get to the point where we get
5 that glass of water full to the point
6 where you would be satisfied by reason
7 and common sense that she's guilty of
8 anything. And one of those elements that
9 we have to put in there, is the element
10 of venue. We have to prove that it
11 happened here in Trumbull County. So we
12 may prove that she was involved. She
13 knew about it, she was an aider and
14 abetter. There was an aggravated
15 robbery, aggravated burglary. We may
16 never prove to you that it happened here.
17 For all you know, it may have happened in
18 New York, Michigan, Florida, and if that
19 element isn't proved that it happened
20 here in Trumbull County, you would have
21 to find her not guilty, right?

22 A. Yes.

1 Q. And despite the fact that you know that Mr.
2 Fingerhut may be deceased, and you may
3 know even that she was involved to some
4 extent, until we prove all of those
5 elements, you would not find her guilty
6 and sign a verdict form finding her
7 guilty by proof beyond a reasonable
8 doubt, would you?

9 A. No.

10 Q. You would hold us to our standard of proof?

11 A. Yes.

12 Q. Now, along those lines of presumption of
13 innocence is the fact that they don't
14 have to do anything. They may present to
15 you a defense. They may present to you
16 some things and try to explain to you,
17 but in essence the Defense in any
18 criminal trial, not just this trial,
19 never has to say a word. They could sit
20 over there and do crossword puzzles
21 during this entire trial. I know
22 Mr. Juhasz and Mr. Ingram aren't going to

1 do that, but we could call in a parade of
2 witnesses. We could have 30 witnesses in
3 this case, 300 Exhibits. They don't have
4 to even cross examine them. And you may
5 find as a juror, "Well, the State didn't
6 prove their case. They had all of these
7 witnesses and all of these documents, but
8 they never had anybody come in and say
9 she was involved or they never had
10 anybody come in and say it happened in
11 Trumbull County." You understand that it
12 is not the quantity of the evidence, it
13 is really the quality?

14 A. Yes.

15 Q. And I guess on the other side of that coin is
16 the fact that we could present to you,
17 just one witness. One witness may know
18 everything. If this were a different
19 type of case, maybe let's say a robbery
20 or let's say a burglary case where
21 someone had broken into someone's home
22 and stole some items and let's say it was

1 the home owner that came home, found this
2 guy red handed, saw him coming out. He
3 knew who the guy was, he had his
4 television. He saw that his window was
5 broken through the back. The guy had
6 unplugged the T.V., carrying it out, gets
7 caught red handed. We could probably
8 prove that case with just one witness.
9 And the guy is going to say, "Yes, I live
10 here in Trumbull County." So you
11 understand that it is really the quality
12 of the evidence, not the quantity,
13 correct?

14 A. Yes.

15 Q. Now, some of the -- also I noticed on your
16 questionnaire, that I believe it was your
17 daughter was assaulted, is that correct?

18 A. Yes.

19 Q. What was the result of that case? Was anyone
20 charged?

21 A. Yes. She was dating somebody and he got sent
22 to jail for ten months or something.

1 Q. Was that here in Trumbull County?

2 A. Yes.

3 Q. Was that handled by the County Prosecutor's
4 office or one of the municipalities like
5 Warren City?

6 A. It was some Prosecutor in Warren. I don't
7 know which one.

8 Q. In the city?

9 A. In the city.

10 Q. So it happened in the city. That is not going
11 to have any bearing on your ability to
12 sit as a juror in this case, is it?

13 A. No.

14 Q. How long ago was that?

15 A. Probably four or five years ago.

16 Q. That wouldn't have involved the County
17 Prosecutor's office?

18 A. No.

19 Q. That would have involved like with Gregg Hicks
20 and maybe like Judge Gysegem down at Muni
21 Court or Judge Ivanchak?

22 A. I don't know. I don't remember.

1 Q. In this particular case, you are going to hear
2 from a lot of police officers. And I
3 didn't really see where you had
4 indicated. Do you know anybody that is
5 in law enforcement, any police officers,
6 any Deputy Sheriffs?

7 A. No. I knew a couple, but they are retired,
8 from Howland.

9 Q. How long ago?

10 A. Only the one I knew was Bill Cranston. I went
11 to school with him.

12 Q. And he obviously works for Howland Police
13 Department. I believe he still does,
14 correct?

15 A. I don't believe so. I don't see him, but I
16 knew him from school.

17 Q. One of the things that the Court is going to
18 tell you is the fact that all of the
19 witnesses that you hear from in this
20 Courtroom, you, if you are picked as a
21 juror, have the ability to use all of
22 their testimony and believe all of it,

1 believe some of it, or believe none of
2 it. That is really what your job is as a
3 juror is to determine, one of the jobs,
4 one of the functions you have is to
5 determine who is telling you the truth
6 and who is not.

7 One of the scenarios that sometimes
8 I talk about is let's say you go out
9 today for lunch and there's an accident
10 down here right on the corner of High
11 Street and Park Avenue. Big
12 intersection, two cars smacked together
13 on each other. And now we come to Court
14 for a trial. And the trial basically
15 is -- it's a civil case, it's not a
16 criminal case. But it's a civil case and
17 it's my client, I am suing the other
18 driver. And we'll just say it is driver
19 B. I represent client A. And he says,
20 "I am driving east on High Street and
21 this guy just barrels through the
22 intersection. I had the green light. I

1 am traveling east, and I'm going up to
2 the Mocha House to get my cup of coffee
3 like I always did and this guy came
4 flying out of nowhere, completely blew
5 the red light at Park Avenue right here
6 at Park and High and he T-boned me, hit
7 me on the passenger side. I got some
8 injuries, I am hurt. I haven't been able
9 to work because I have got these terrible
10 headaches." And I present one witness.
11 And the one witness is the guy who is
12 standing on the corner says, "Yes, I saw
13 the whole thing. The guy was traveling
14 east on High Street, he had the green
15 light. The guy coming through the
16 intersection is red."

17 And let's go back and let's say this
18 is a criminal case, he's been charged
19 with going through that light, basically
20 running the red light. I have to prove
21 it by proof beyond a reasonable doubt.
22 And I may present to you only those two

1 witnesses. That is probably going to be
2 good enough for you to find him beyond a
3 reasonable doubt guilty, that the guy
4 traveling on Park, driver B was guilty of
5 driving through that red light; correct
6 or not?

7 A. It is possible.

8 Q. What else would you need or what else would
9 you like to see?

10 A. Depends on the witness to me.

11 Q. Depends on who he was?

12 A. Yes.

13 Q. And that is an excellent point. Now let's say
14 that that witness happens to be the
15 brother of driver A. Cause you some
16 concerns, doesn't it?

17 A. Yes.

18 Q. And let's say that the guy at the intersection
19 is not only the brother of driver A, who
20 is the victim in this case, but also he's
21 a convicted felon and he's been to prison
22 for stealing and he's got a bad record.

1 And to top it all off, he wears glasses.
2 He comes into the Courtroom with these
3 big thick coke bottle glasses and the
4 Defense still hasn't presented anything
5 to you. They haven't questioned him or
6 anything. You are going to have some
7 real problems with this guy now, aren't
8 you?

9 A. Yes.

10 Q. And now let's say the Defense asks him one
11 question and says, "Well, Mr. Witness,
12 isn't it true that on this day, you
13 didn't even have those glasses on that
14 you need to see the end of your nose?"
15 He says, "Yes, I was going down to the
16 optometrist and they were broken that
17 day, I didn't have them on." That is
18 probably not going to be enough for you,
19 right? You have got a guy who has got a
20 bad record, crimes of dishonesty, doesn't
21 have his glasses on and related to the
22 victim. Those are a lot of things that

1 you are going to consider against
2 believing his testimony, right?

3 A. Yes.

4 Q. And it may be a horrible crime and you may
5 find out that the guy who was driver B
6 has a horrible record. He didn't have a
7 license, couldn't even drive, maybe was
8 drunk. But the fact of the matter is, we
9 didn't prove to you the case beyond a
10 reasonable doubt, right?

11 A. No, you didn't.

12 Q. Now, let's change that up a little bit and the
13 guy who is the witness, Mr. Witness is
14 let's say, Reverend, Priest, Minister,
15 local church, and he happened to come
16 down to the Courthouse here to get some
17 documents for the church. He's walking
18 back up the street to go back to the
19 church and doesn't know either one of
20 them. Clearly was paying attention. He
21 says, "I walk this Courthouse Square
22 every day at lunch time. I walk around.

1 I am really careful to watch the lights.
2 In fact, it is my habit that I walk
3 around the Courthouse Square and I look
4 out, because I don't want to get hit.
5 And I happened to be at the light and I
6 saw this sign that said "walk," that the
7 light was green, but I know because I see
8 some of these crazy drivers, that I
9 always look both ways, because even
10 though I have the right of way, with the
11 people on High Street that are traveling
12 east I know sometimes miss that traffic
13 light coming down Park Avenue. And I
14 always check both ways. And as I looked
15 to my right, this guy was just flying up
16 on Park. He was going north and I knew
17 there was going to be an accident and
18 just as I stepped on the curb, I stopped
19 and saw him barreling this guy going down
20 High Street." That would be enough for
21 you, right?

22 A. Yes.

1 Q. In a nutshell, that is sort of what we're
2 talking about here. We're talking about
3 you making those determinations. And
4 again, every witness you are going to
5 have to go through, and they may go
6 through questioning, not required to, but
7 they are going to show you things and try
8 and show you things and we're going to
9 show you things. You feel you will be
10 able to make those determinations as to
11 the witnesses, and the credibility of
12 those witnesses then, correct?

13 A. Yes.

14 Q. And you understand how that works, that there
15 are various things that play into any
16 witness' perception, whether or not they
17 have good eyesight, whether or not they
18 have a criminal record, whether or not
19 they were paying attention, whether or
20 not they have some kind of bias or
21 interest with either the victims or the
22 Defendant, correct?

1 A. Yes.

2 Q. Now, in every case we're going to have, I
3 guess, evidence to present to you.
4 Sometimes it is just witnesses, but in
5 this case, we're going to have some
6 evidence for you.

7 MR. INGRAM: Excuse me, but the
8 testimony of witnesses is evidence.

9 Q. I'll rephrase that. We'll have some physical
10 evidence. Sometimes the only evidence
11 we'll have will be the testimony, what
12 someone saw or heard. In this case, I
13 anticipate that we're going to have some
14 actual physical evidence. One of the
15 things we're going to have is some
16 letters and some phone calls and that is
17 one of many, many things. Some of the
18 many, many things that I anticipate we'll
19 present to you. You understand that in
20 every case, even in a case as big as
21 this, there's probably things out there
22 that no one has thought of or maybe no

1 one bothered to look at, whether it be
2 the Defense side or the State's side.

3 You as a juror, though, you can't go
4 out and do your own tests and your own
5 testing of the evidence and testing of
6 the witnesses. For instance, if the
7 witness says something and maybe how long
8 it took to get somewhere, let's say we're
9 going back to our traffic case and the
10 witness says, "Well, this guy came down
11 at such and such a speed and did this."
12 You are not allowed to go jump in your
13 car and say, "I'm going to see if this
14 really does happen and I'm going to drive
15 down Park Avenue and North and see if
16 this really happens, if I can make it
17 through both the light at Park and High
18 and the light at Park and Market Street
19 and see if I can hit both of those lights
20 at the same time and make them both."
21 You are not allowed to do that. You
22 can't go out and test that. You

1 understand that?

2 A. Yes.

3 Q. We're here today because there was what is
4 called an indictment, and the indictment
5 is issued by the Trumbull County Grand
6 Jury in this particular case. Have you
7 ever served on the Grand Jury?

8 A. No.

9 Q. Do you have any idea how the Grand Jury works?

10 A. I have some understanding of how it works.

11 Q. Do you know that at the Grand Jury, Miss
12 Roberts and her attorneys were not there.
13 They didn't present anything. They
14 weren't permitted to even come in there.
15 They didn't show up. They didn't present
16 any evidence. There was no Judge there.
17 It was basically Assistant Prosecutor and
18 some witnesses, not even all of the
19 witnesses, that presented this case to
20 the Grand Jurors. And at Grand Jury, it
21 only takes seven of the nine voting
22 members to issue that piece of paper and

1111

1 that indictment. You understand that
2 that estimate is just merely an
3 accusation. It is just merely a group of
4 people in this community saying, "Hey, we
5 think this person did something wrong."
6 You won't take the fact that she's
7 charged with these horrendous crimes and
8 say, "Listen, we got to find her guilty
9 of something, because look at all of
10 these crimes." We have got aggravated
11 murders, you have got death penalty
12 specifications. You have got aggravated
13 robbery, aggravated burglary. You
14 wouldn't say, "Hey, she's guilty of
15 something. I'm not walking out of here
16 if the State didn't prove the elements of
17 those offenses." You would have no
18 problem finding her not guilty, correct?

19 A. Correct.

20 Q. Despite the fact that some Grand Jury
21 somewhere that didn't hear anything from
22 her, didn't hear anything from her

1 Attorneys, didn't have a Judge with them,
2 found that there was the need to indict
3 her, correct?

4 A. Yes.

5 Q. One of the things in this case that we're
6 going to talk about is this, and you are
7 going to be instructed on some of the
8 actual crimes involving what we call
9 complicity, and I am assuming, and maybe
10 I'm wrong, but I am assuming you have
11 heard those terms used before, like you
12 are an aider and abetter. You are a
13 complicitor?

14 A. Yes.

15 Q. And I'm going to tell you flat out right now,
16 no one in this case is going to come in
17 here and say, "I saw her pull the
18 trigger." Or, "She's the one who pulled
19 the trigger," or "We ran a gunshot
20 residue test on her hand and we found
21 evidence that she had fired a gun this
22 night in question." So that is

1 completely out of the equation here. How
2 does it change the fact for you in being
3 a juror, and making these determinations,
4 or does it that she's accused as an aider
5 and abetter and not the actual principal
6 offender? Is that going to, I guess what
7 I'm asking you, does that make this a
8 more difficult case for you to find her
9 guilty or not guilty or is this going to
10 be a case where you are going to say,
11 "Hey, I'm going to follow the Judge's
12 instructions on what that term means"?

13 A. I'll follow the Judge's instructions.

14 Q. And you may have some preconceived ideas
15 coming in here today, as to what some of
16 these terms mean, reasonable doubt,
17 complicity, aider and abetter,
18 presumption of innocence. But you
19 believe that you will follow whatever the
20 Court instructs you on in terms of the
21 law and what those terms mean and what
22 you have to do as a juror, correct?

1 A. Yes.

2 Q. Do you have any questions for me that you feel
3 that you need to ask me in terms of how
4 you are going to decide this case or
5 problems that may arise or questions that
6 you may have in deciding this case?

7 A. No.

8 Q. You believe you can be a fair and impartial
9 juror in this matter and put aside
10 whatever you have read or heard about
11 this case, and put aside your personal
12 opinion about the death penalty, and
13 decide this case fairly and honestly, and
14 give her the benefit of the doubt,
15 because you have to do that. She gets
16 the reasonable doubt. We have to prove
17 that beyond a reasonable doubt. You feel
18 you can be a fair and impartial juror?

19 A. Yes.

20 Q. We don't want to run into this situation,
21 where if you are picked as a juror, two
22 or three weeks in this trial or a couple

1 of days into this trial, you are now
2 sitting there saying, "Hey, Mr. Bailey,"
3 or "Mr. Becker," or "Your Honor, I have a
4 question about this. I can't do this.
5 No one ever told me this." You feel you
6 have a good understanding of what this
7 case is about and what your duty is going
8 to be as a juror?

9 A. Yes.

10 Q. And you can fulfill that obligation?

11 A. Yes.

12 THE COURT: Let's take a ten minute
13 break.

14 (Court in recess at 11:05 A.M.)

15 (Resumed in Open Court at 11:25 A.M.)

16 EXAMINATION BY MR. INGRAM OF MR. DERMER:

17 Q. Good morning, Mr. Dermer. John Juhasz and I
18 share the responsibility of representing
19 Donna here, who is on trial for her life.
20 And obviously, we feel we should take
21 every reasonable precaution in selecting
22 a fair minded Jury, the same type of Jury

1 you or I would want if we were on trial.

2 Does that sound fair enough to you?

3 A. Yes.

4 Q. As Mr. Becker told you, this is the only time
5 we can talk directly to one another, and
6 more importantly than me being able to
7 talk to you, it is the fact that you are
8 allowed to talk to us. So, if there's
9 anything that pops into your mind during
10 the period of time that I am standing up
11 here, please let me know and we'll talk
12 about it.

13 The process that you are going
14 through here is a lot like a job
15 interview, except when you go for a job,
16 you get to choose the job you are going
17 to be interviewed for. And in this
18 situation, the Jury wheel actually chose
19 you, and brought you in here. We're
20 interviewing you today for one of the
21 most important jobs there is, the job of
22 finding the truth and determining the

1 fate of another human being. So my first
2 question to you is, how do you feel about
3 being asked to assume that
4 responsibility?

5 A. It is hard. Difficult.

6 Q. You are up to it?

7 A. Yes.

8 Q. In a nutshell, this case boils down to the
9 Government's allegation that Donna
10 Roberts plotted or conspired with a male
11 companion, Nate Jackson, to cause the
12 death of Robert Fingerhut. Donna and
13 Robert were divorced but continued to
14 work with one another at the Greyhound
15 bus station in Warren and Youngstown, and
16 continued to live together in Howland.
17 This trial, you will understand, is about
18 the guilt or innocence of one person and
19 one person only, Donna Roberts. You
20 understand that?

21 A. Yes.

22 Q. Throughout the course of this trial, you will

1 hear the name Nate Jackson and you have
2 already talked to Mr. Becker about Nate
3 Jackson. And shortly into the
4 proceedings, you may quickly conclude
5 that Nate Jackson did what the State says
6 he did. That is not the issue here. Do
7 you understand that?

8 A. Yes.

9 Q. The issue here is, did Donna help him do it or
10 not, and that is what we're here to
11 determine. Will you hold the State of
12 Ohio to its burden of proving beyond a
13 reasonable doubt that Donna helped Nate?

14 A. Yes.

15 Q. In support of its allegation that Donna helped
16 Nate, the State will present during this
17 trial various letters and recorded
18 conversations between Donna and Nate.
19 Some of those letters and some of those
20 conversations are sexually explicit and
21 to be honest with you, rather offensive.
22 However, the charge here is murder, not

1 loose morality. Do you understand that?

2 A. Yes.

3 Q. No matter how shocked or offended you may be
4 by the sexual nature of some of this
5 evidence, as a trial juror it will still
6 be your job responsibility to test that
7 evidence, to determine whether it ties
8 Donna to the death of Robert Fingerhut.
9 Will you do that?

10 A. Yes.

11 Q. Now Donna denies that she actually
12 participated or by conspiracy, plot or
13 otherwise to murder Robert Fingerhut. Do
14 you think you might have a problem giving
15 a scarlet woman such as Donna a fair
16 shake?

17 A. No.

18 Q. Would you have the courage to acquit if you
19 felt a not guilty verdict was warranted
20 by the evidence?

21 A. I could do it.

22 Q. I know you talked with Mr. Becker about

1 pre-trial publicity. I have to talk with
2 you a little more about that. What all
3 do you recall seeing, reading or hearing
4 about either this case, or the Nate
5 Jackson case?

6 A. One thing I remember in this case was, what
7 caught my attention the first time, I
8 believe it said somebody from Howland and
9 I live in Howland. I didn't know him. I
10 never heard of them. That is the first
11 thing that caught my eye. As far as Nate
12 Jackson, I didn't know when his trial was
13 up or going, because I didn't know that
14 he was found guilty until just like last
15 week in the paper.

16 Q. Let me talk to you about that. You found out
17 about the Jackson verdict Tuesday of last
18 week when we all assembled down at the
19 other end of the hallway?

20 A. I believe it was in the paper that morning on
21 the front page.

22 Q. Does the fact that Mr. Jackson was convicted,

1 create any impression in your mind that
2 Donna was involved?

3 A. Involved with him somehow, but not with murder
4 or anything, no.

5 Q. You do have an impression that Donna was
6 involved with Nate Jackson?

7 A. You said he was.

8 Q. And that is from the letters and the tapes?

9 A. Yes, that is the only reason. Do I know she
10 had any physical contact with him or
11 anything? No, I don't know. If she did,
12 I don't know.

13 Q. You don't know whether she had anything to do
14 with the death of Robert Fingerhut or
15 not?

16 A. No.

17 Q. And that is what you are here to determine?

18 A. Yes.

19 Q. It is extremely important that jurors avoid
20 news media coverage about any trial that
21 the jurors are hearing. It is so
22 important that the Judge asked you

1 actually to sign a written document. Do
2 you recall that?

3 A. Yes.

4 Q. Let me explain the reason. And I think I can
5 do it by, although I hate to ever mention
6 the O.J. Simpson trial, I think I can
7 explain the importance by going to that
8 trial. Every night in that proceeding
9 you would turn on the news, and there
10 would be some hot shot lawyers, maybe not
11 even hot shot lawyers, just someone they
12 could get to come and sit in front of a
13 camera and one would be pro Defense and
14 one would be pro Prosecution, and they
15 had each put a different spin or
16 interpretation on the evidence. Did you
17 see any of that?

18 A. Yes.

19 Q. Would you agree with me that a juror should
20 not have been exposed to that because the
21 impressions of the juror could have been
22 affected by seeing what those people were

1 saying about that trial?

2 A. Yes, I could see how it could.

3 Q. That is the same here and that is why we ask
4 you to avoid news coverage. Will you do
5 your best to do that?

6 A. Yes. Well, as far as seeing the news, on my
7 job I work 12 hour days and I work from
8 four in the morning to four in the
9 afternoon or four in the afternoon to
10 four in the morning. I don't see the
11 news probably, the local news, three to
12 six days a week usually.

13 Q. You work at Delphi, right?

14 A. Yes. I just finished up at four in the
15 morning.

16 Q. When we all assemble -- sorry to keep you up.

17 A. That is okay.

18 Q. I'll try to go as quick as I can. When we all
19 assembled down at that other hallway, did
20 you recognize any of your coworkers by
21 the way?

22 A. No, I didn't see anybody I knew.

1 Q. If you are selected as a juror, you and all of
2 your other jurors will be told to keep an
3 open mind until the case is over. If you
4 hear the testimony of let's say --
5 there's ten witnesses in the case. And
6 the first witness takes the witness stand
7 and testifies that, "I was in front of
8 the delicatessen at this corner on May 5,
9 1999." And you decide that you believe
10 that witness, and that that witness was
11 there and that is an important fact to
12 resolving that case. You then would not
13 listen with the same degree of openness
14 to the rest of the testimony, and if the
15 third or fourth witness in that trial
16 were to say, "Hey, that guy couldn't have
17 been there, because he was with me at the
18 Southern Park Mall in Youngstown," you
19 might have missed that because you
20 already decided that preliminary question
21 of fact. Are you with me?

22 A. Yes.

1 Q. So the Judge will instruct you that it is
2 important to keep an open mind until the
3 final gavel pounds; will you do that?

4 A. Yes.

5 Q. And you can't talk about this case with your
6 fellow jurors. And you know that is
7 hard. Because odds are you won't know
8 most, if not all of your other jurors.
9 The only thing you guys are going to have
10 in common are what you see, hear and what
11 goes on here, so since that is the only
12 thing you have in common, the natural
13 inclination is to discuss what you all
14 have in common, but you are going to have
15 to do your best to resist the temptation
16 to do that. You think you are up to
17 that?

18 A. Yes.

19 Q. As you know, this is a capital case and we're
20 required to learn your feelings regarding
21 the death penalty and life imprisonment
22 as sentencing options. Do you understand

1 that this is potentially and only
2 potentially a two phase process?

3 A. Yes.

4 Q. At the first phase, if the State of Ohio
5 doesn't meet its burden of proof and the
6 Jury determines that Donna Roberts is not
7 guilty, what happens?

8 A. She goes free.

9 Q. And we all go home?

10 A. Yes.

11 Q. Only if the Jury returns a verdict of guilty
12 on the charge of aggravated murder and a
13 verdict of guilty as to a death
14 specification, do we get to a second
15 phase. You read about that, when
16 yesterday in the preliminary
17 instructions -- or was that this morning
18 you read the preliminary instructions?

19 A. I read that Friday.

20 Q. How has your juror experience been treating
21 you so far? Have we been keeping you
22 waiting long enough? We try to do the

1 best we can, but sometimes it gets
2 difficult with scheduling.

3 A. I got three days off, so I can rest.

4 Q. The mere fact that I am sitting up here
5 talking to you about possible punishment,
6 actually causes me some concern. Seems a
7 little odd that we're talking about
8 punishment when you haven't even
9 determined whether the person we're
10 talking about has done anything wrong or
11 not. Does that seem odd to you?

12 A. A little bit.

13 Q. Does it seem like you are putting the cart
14 before the horse or we're putting the
15 cart before the horse?

16 A. Some.

17 Q. Let me explain my concern. I don't want you
18 to think that just because we're standing
19 up here asking you about punishment that
20 we're predicting you're going to get to a
21 second stage. You understand that is not
22 so?

1 A. Yes.

2 Q. The State has asked whether you would fairly
3 consider the death penalty as a
4 sentencing option if we ever got to a
5 second phase. The flip side of that
6 question is, could you consider the three
7 life sentence options fairly if we ever
8 get to a second phase?

9 A. Yes.

10 Q. You understand that life without parole is
11 indeed life without parole?

12 A. Yes.

13 Q. You go in, you don't get out?

14 A. Yes.

15 Q. And the other two are parole eligibility after
16 25 and life with parole eligibility after
17 30 years. You do day for day, 25, before
18 you are even eligible, or day for day,
19 you do 30 years before you are even
20 eligible?

21 A. Yes. It was in the paper I read.

22 Q. Generally, and let me back up. We could

1 change roles. You could stand up here
2 and ask me the same questions I'm asking
3 you and I want you to understand, I would
4 have a difficult time answering these
5 questions. I am talking to you about
6 things that we don't normally think about
7 in our daily lives and they are hard
8 things to sort of intellectualize, and I
9 apologize for the difficulty of the
10 questions, but they must be put to you.
11 Do you understand that?

12 A. Yes.

13 Q. Generally, how do you feel about life
14 imprisonment as an alternative to the
15 death penalty in capital cases?

16 A. I suppose if it was me -- well, I don't know.
17 I have never been in prison but I guess
18 the alternative is better than death.
19 Maybe, I don't know. It is hard to say.

20 Q. Have you ever heard someone in passing or in
21 conversation say that they did not
22 believe in life imprisonment as an

1 alternative to the death penalty because
2 of the cost of incarceration?

3 A. I have heard that, yes.

4 Q. Do you have any particular feelings on this
5 cost issue?

6 A. No.

7 Q. Have you ever considered a political
8 candidate's views on capital punishment
9 in determining whether or not to vote for
10 that candidate?

11 A. Have I ever or would I ever?

12 Q. Have you ever?

13 A. Not that I can recall, no. Would I? I might.
14 If somebody came out and was strictly
15 against it, no, I wouldn't. I couldn't
16 vote for him if he said he was strictly
17 against it. I haven't.

18 Q. Do you remember when Celeste was Governor?

19 A. Yes.

20 Q. And were you exposed to any of the publicity
21 or discussion about the fact that there
22 were no death sentences carried out while

1 he was Governor?

2 A. I didn't know. We haven't had one for a long
3 time. If it was just him or not, I don't
4 know. As far as I know, Ohio hasn't had
5 any for quite awhile.

6 Q. How do you feel about that?

7 A. I think some of them deserve it. They should
8 have been put to death, depending on
9 their crime.

10 Q. Recently, there's been some debate in this
11 country about the appropriateness of the
12 death penalty. The State of Illinois,
13 Illinois put on a moratorium. The
14 Supreme Court recently issued a decision
15 about death sentences for the mentally
16 and mentally impaired. Have you seen or
17 heard anything about these issues?

18 A. No.

19 Q. Have you ever seen the movie "True Crimes,"
20 starring Clint Eastwood?

21 A. I don't know. I can't remember if I did.

22 Q. He's a reporter and the plot -- as the plot

1 unfolds, there's a person who has been
2 convicted and is awaiting execution. It
3 was on HBO.

4 A. I don't remember it, no.

5 Q. I want to underscore before I ask you this
6 question. I'm asking you your personal
7 vow and not whether you can follow
8 instructions of will you or not. We'll
9 get to that. Those are two separate
10 issues. Do you see that?

11 A. Yes.

12 Q. As I understand your views on capital
13 punishment, it is appropriate for some
14 cases?

15 A. Yes.

16 Q. And I believe you said some premeditated
17 murders, murders involving children and
18 serial killers?

19 A. Yes.

20 Q. Could I ask you to be a little more definite,
21 to explain your view a little more to me?

22 A. Well, premeditated, even though it is planned

1 ahead of time by certain individuals, I
2 would not consider the death penalty, but
3 some cases I would. But as far as serial
4 killers, they have planned their murders.
5 They are going to shoot random people. I
6 believe they should get the death penalty
7 and people that do things to children,
8 they should get the death penalty, but
9 not everybody that is premeditated should
10 get the death penalty, not necessarily.

11 Q. I am switching horses and I'm going to your
12 ability to follow instructions. I want
13 to be fair. One of the -- well, there
14 are two aggravated murder counts in this
15 indictment. Both of those counts allege
16 that the killing of Robert Fingerhut was
17 purposely done. And we'll talk more
18 about that in a few minutes. And the
19 other count, one count alleges that the
20 murder was done with prior calculation
21 and design, advance planning. You
22 understand that?

1 A. Yes.

2 Q. The law says that if there's an aggravated
3 murder with advance planning, and if the
4 Defendant is convicted of that aggravated
5 murder, and I'm not talking about this
6 case, I am talking about some made up
7 case. If the Defendant is convicted of
8 the aggravated murder charge, and
9 convicted of a death specification, that
10 the Jury should equally and fairly
11 consider the four sentence options. Are
12 you with me there?

13 A. Yes.

14 Q. In other words, none of those options should
15 start with a head start. Does that make
16 sense?

17 A. Yes.

18 Q. Let me tell you how it usually comes up.
19 Usually, it comes up when a juror's views
20 about the death penalty are such that the
21 juror -- and I'm not saying you have
22 expressed this opinion, because you have

1 not. It usually comes up when the juror
2 says, "Well, if convicted of an
3 aggravated murder, I would automatically
4 lean towards the death penalty. If
5 convicted of murder with advance
6 planning, I would lean towards the death
7 penalty." That is when it usually comes
8 up. But your views are not like that or
9 are they like that?

10 A. No.

11 Q. They are not?

12 A. No.

13 Q. Now if you are ever called upon to decide a
14 sentence, you don't decide upon a
15 sentence in a vacuum. The law gives you
16 instructions and the Judge will give you
17 instructions. You will be instructed to
18 weigh aggravating circumstances, bad
19 things, against mitigating factors,
20 positive things that can be brought out
21 about the Defendant. You understand
22 that?

1 A. Yes.

2 Q. And weigh it. You remember Mr. Becker telling
3 you that the Jury is the sole judge of
4 the weight of the evidence?

5 A. Yes.

6 Q. So when you weigh this evidence, that is your
7 personal responsibility. You got me
8 there?

9 A. Yes.

10 Q. And do you understand that before any juror
11 can ever vote for death at this made up
12 second phase, that juror would have to be
13 convinced beyond a reasonable doubt that
14 the aggravating circumstances outweigh
15 the mitigating factors, and the death is
16 the appropriate sentence?

17 A. Yes.

18 Q. And if we ever get to such a second phase, I
19 am certain you will hold the State of
20 Ohio to its burden of proof?

21 A. Yes.

22 Q. The incident with your daughter. I hope she

1 wasn't hurt. Was she hurt?

2 A. She was beat up pretty good.

3 Q. Did you go to any of the Court proceedings? I
4 understand that you did not go as a
5 witness. You did not participate. My
6 son was assaulted and I can assure you
7 that when there was a Court proceeding, I
8 went to the Court proceeding. Did you go
9 to the proceedings in Municipal Court?

10 A. I think, yes, I did. I don't know if I went
11 to all of them, because I might have been
12 working. I think it only lasted one day.

13 Q. Is there anything about that case that left
14 sort of a sour taste in your mouth
15 regarding the criminal justice process?

16 A. No.

17 Q. Do you belong to or associate with any group
18 which has crime prevention or law
19 enforcement as a goal?

20 A. No.

21 Q. Have you ever donated any time, money or
22 services to a political campaign or

1 issue?

2 A. No.

3 Q. Do you belong to any group or organization
4 which is active in any political matter?

5 A. No.

6 Q. And the last five years or so, have you signed
7 a petition on any public issue?

8 A. No.

9 Q. Do you hold any office in Local 717?

10 A. No.

11 Q. Have you ever?

12 A. No.

13 Q. Does it trouble you at all that this occurred
14 in Howland and you lived in Howland for
15 30 years? That doesn't pose a problem
16 for you, does it?

17 A. No.

18 Q. The Judge will instruct you that sympathy has
19 no place in the Courtroom. Feelings of
20 sympathy should not affect your judgment.
21 It is a Court of law, not a Court of
22 sympathy. Do you agree with that?

1 A. Yes.

2 Q. And sympathy for Donna Roberts shouldn't
3 affect the way you evaluate the evidence
4 in this case. That sound fair to you,
5 right?

6 A. Yes.

7 Q. The other side of that coin is, it is only
8 natural to feel some sympathy for someone
9 whose life is unexpectedly and suddenly
10 taken. So sympathy for the victim, Mr.
11 Fingerhut also should not affect your
12 evaluation of the evidence. Do you agree
13 with that?

14 A. Yes.

15 Q. And you will see some evidence in this case,
16 which we're all human. And I'm going to
17 tell you, some of the evidence you are
18 going to see is going to arouse natural
19 feelings of sympathy. You will see
20 photographs. You may see photographs of
21 a point blank wound to the back of Mr.
22 Fingerhut's head. Coroner's photographs,

1 some of these may be blown up. Even
2 though this evidence evokes an emotional
3 response from you, let's say sympathy or
4 anger, it is still going to be your job
5 responsibility to evaluate, test that
6 evidence, to determine whether it ties
7 Donna to this offense. Will you do that?

8 A. Yes.

9 Q. How do you personally feel about the rule of
10 law which requires a trial juror to
11 presume a Defendant not guilty?

12 A. That is the way it should be.

13 Q. I want to talk just briefly about that. That
14 presumption of innocence, it sounds like
15 a lot of legal mumbo jumbo. If one of
16 your daughters had been accused of some
17 wrongdoing, say in high school or
18 afterwards and you honestly in your heart
19 felt that your daughter did not do what
20 she was accused of, you would require
21 evidence that she did it before you would
22 be willing to change your mind, wouldn't

1 you?

2 A. Yes.

3 Q. Does that sound like the presumption of
4 innocence to you?

5 A. Yes.

6 Q. You presumed someone is innocent and that
7 presumption remains until it is removed,
8 if ever, by evidence?

9 A. Yes.

10 Q. And in this case, that is by evidence beyond a
11 reasonable doubt. And if your daughter
12 were accused of wrongdoing and evidence
13 was presented to you, I doubt you would
14 just willy nilly accept that evidence at
15 face value. You would probably look at
16 it with a critical or jaundiced eye to
17 see what it is really supposed to be.
18 Does that make sense?

19 A. Yes.

20 Q. Will you do that here?

21 A. Yes.

22 Q. Because of the presumption of innocence, the

1 State has the burden of proof, and as
2 Mr. Becker told you, Mr. Juhasz and I can
3 sit here and play crossword puzzles. I'm
4 not very good at crossword puzzles, but
5 we don't have to do anything, and if they
6 don't convince you beyond a reasonable
7 doubt, you would have to return a verdict
8 of not guilty. Do you understand that?

9 A. Yes.

10 Q. You also understand, Donna is on trial for
11 murder, not for being a woman of loose
12 moral character?

13 A. Yes.

14 Q. That burden of proof applies to each and every
15 essential element, and I think for the
16 sake of brevity, that Mr. Becker sort of
17 compacted the two aggravated murder
18 charges. There are two charges, one
19 death. The State is allowed to plead
20 alternatively, so two counts here, one is
21 purposely causing the death of Robert
22 Fingerhut with prior calculation and

1 design. That is advance planning, that
2 is the old premeditation. The other
3 aggravated murder count is purposely
4 causing the death of Robert Fingerhut,
5 while in the commission of an aggravated
6 burglary or aggravated robbery. Are you
7 with me?

8 A. Yes.

9 Q. They have to prove each and every essential
10 element and purpose is an essential
11 element. And as the Judge will tell you,
12 purpose is the same as intent. A person
13 acts purposely, if it is his specific
14 intention to cause a specific result.
15 Would you agree that the facts and
16 circumstances surrounding an act shed
17 light on the actor's intent?

18 A. Yes.

19 Q. For instance, if you leave a paper trail as
20 opposed to covering your tracks, it is
21 unlikely that you are engaged in unlawful
22 activity. Does that make sense to you?

1 A. What was that again?

2 Q. If you leave a paper trail as opposed to
3 covering your tracks?

4 A. What is the difference? Just because you
5 cover your tracks doesn't mean you are
6 not guilty.

7 Q. How about if you act openly in the light of
8 day as opposed to secretly undercover of
9 darkness?

10 A. No. No difference. What would be the
11 difference? If you committed a crime, it
12 is a crime. Daytime or nighttime.

13 Q. That is true. If I am meeting someone in the
14 middle of that intersection at 12 noon in
15 front of 50 people, don't you think it is
16 less likely that the object of our
17 meeting is unlawful, than meeting with
18 him at 2:00 at night in the back alley
19 where nobody can see or hear us?

20 A. Seems like it would be, but not necessarily.

21 Q. I agree. You have to test those
22 circumstances. Will you do that?

1 A. Yes.

2 Q. Now the aggravated burglary charge of trespass
3 is an essential element and the Judge
4 will define trespass to you. And I
5 believe he will define that as to enter
6 or remain on the land or premises of
7 another. Will you hold the State to its
8 burden of proving trespass?

9 A. Yes.

10 Q. And the aggravated burglary charge which is
11 count three, is the first death
12 specification to the two aggravated
13 murder counts. Do you think you have a
14 handle on that?

15 A. Yes.

16 Q. The fourth count is aggravated robbery, and
17 the State has to prove to you that there
18 was an intended theft offense. Theft
19 offense is one that necessarily involving
20 or the taking or attempting to take
21 someone else's property. Will you hold
22 the State to the burden of proving that?

1 A. Yes.

2 Q. And you understand that the aggravated
3 robbery, which is the fourth count of the
4 indictment, is the second death
5 specification to the two aggravated
6 murder counts?

7 A. Yes.

8 Q. Now Donna doesn't have to testify, doesn't
9 have to do anything. And the Judge will
10 tell you that if she doesn't testify, you
11 can't hold it against her. That is part
12 and parcel our heritage in this country.
13 How do you personally feel about that
14 rule?

15 A. She has her right to that.

16 Q. On the other hand, if she does testify, she's
17 a witness just like any other witness,
18 you would judge her or you should judge
19 her testimony by the same rules, the same
20 standards that apply to each and every
21 witness that testifies?

22 A. Yes.

1 Q. If she testifies, she obviously has an
2 interest or stake in the outcome of this
3 case, because she's the Defendant, right?

4 A. Yes.

5 Q. And that is one of the things the Judge will
6 tell you that you should consider. If
7 you do it fairly, however, if you find
8 that any other witness has an interest or
9 stake in the outcome of this case, you
10 would also apply that factor in
11 determining whether you believe the other
12 witnesses. Are you with me?

13 A. Yes.

14 Q. Mr. Becker told you all of the reasons that
15 the indictment is not evidence. And you
16 understand it is not evidence?

17 A. Yes.

18 Q. After he talked to you, do you understand why
19 it is not evidence?

20 A. Yes.

21 Q. And it will be read to you throughout the
22 course of this trial. No matter how many

1 times that indictment is read, no matter
2 how many times that indictment is
3 referred to, it doesn't suddenly become
4 evidence. Fair enough?

5 A. Yes.

6 Q. And as the trial juror, you will have to judge
7 the credibility, the believability of
8 each and every witness that testifies.
9 And the Judge will give you a list of
10 factors that you should consider. Will
11 you take each of those factors and apply
12 them to each and every witness that
13 testifies?

14 A. Yes.

15 Q. He's also going to tell you that you should
16 take the test of truthfulness that you
17 apply in your every day life. And apply
18 those tests to each and every witness
19 that testifies.

20 Now, in your daily life, you are
21 frequently called upon to determine
22 whether somebody is telling you the truth

1 or trying to hoodwink you?

2 A. Yes.

3 Q. And whatever test you use in making that
4 determination, that is what we mean by
5 test of truthfulness you apply in your
6 daily life. So whatever test you
7 intuitively use, will you apply those to
8 each and every witness that testifies?

9 A. Yes.

10 Q. Now, the State's burden is proof beyond a
11 reasonable doubt. And at some point in
12 your life or another you have said to
13 yourself I would imagine, "I am going to
14 give them the benefit of the doubt." Or
15 "I'm going to give my girl the benefit of
16 the doubt." Well, you never said to
17 yourself, "I'm going to give her the
18 benefit of an unreasonable doubt." Did
19 you?

20 A. No.

21 Q. I think we intuitively know what is reasonable
22 and what is unreasonable. Proof beyond a

1 reasonable doubt requires that you be
2 firmly convinced and is proof of such a
3 character that an ordinary person like
4 you or me, would be willing to rely and
5 act upon it in the most important of our
6 affairs. And we have all made important
7 decisions, haven't we?

8 A. Yes.

9 Q. And when we're called upon to make important
10 decisions, sometimes we make a check
11 list, when we do it in our mind's eye or
12 whether we actually get a piece of paper
13 and write pros or cons. We write the
14 good things for the decision, the
15 favorable things, and then the bad
16 things, the unfavorable things, right?

17 A. Yes.

18 Q. And while we're trying to determine whether we
19 should make the decision, the natural
20 focus goes back to the things on the bad
21 side. The unfavorable, because if you
22 can subtract all of those away, then you

1 can say you are firmly convinced that the
2 decision is the right thing for you.

3 Does that make sense?

4 A. Yes.

5 Q. All you would be left with are the positives?

6 A. Yes.

7 Q. If you are making a decision, and you are
8 checking out those negatives and you
9 start scratching, like you are buying a
10 house. You had a concern about the
11 structural stability of the house. Well,
12 you called in an exterminator, you don't
13 have termites. You called in a
14 contractor, you start striking those
15 negatives. But you just have a nagging
16 doubt about whether you can say, maybe
17 making the mortgage payment, and no
18 matter how much you think about it, no
19 matter how much you investigate it, that
20 doubt still remains reasonable in your
21 mind about the mortgage payment. So
22 there's still one negative?

1 A. Yes.

2 Q. If there's one negative, you cannot say beyond
3 a reasonable doubt that that decision was
4 the right thing for you. Do you
5 understand that?

6 A. Yes.

7 Q. And will you hold the State to that burden in
8 this case?

9 A. Yes.

10 Q. And you will hear, you have heard of
11 circumstantial evidence?

12 A. Yes.

13 Q. Circumstantial evidence is proof of a fact by
14 direct evidence from which you are asked
15 to make an inference or a leap in logic
16 to something else.

17 A. Yes.

18 Q. Are you with me?

19 A. Yes.

20 Q. If you are asked to make a leap in logic, do
21 you think you had better test the
22 reasonableness of that leap?

1 A. Yes.

2 Q. Because if the leap is unreasonable, then you
3 shouldn't make it?

4 A. Yes.

5 Q. Do you agree with that?

6 A. Yes.

7 Q. And you recall talking to me about the
8 presumption of innocence and your girls
9 and how you might look at evidence with a
10 critical eye?

11 A. Yes.

12 Q. If you were presented with circumstantial
13 evidence regarding your girls, you think
14 you might look for other inferences that
15 may be pointed in other directions?

16 A. Yes.

17 Q. And will you do that here?

18 A. Yes.

19 Q. Now that we have talked, is there anything
20 that has popped into your mind that you
21 would like to discuss with anyone here,
22 either Mr. Becker, the Judge or I?

1 A. No.

2 MR. INGRAM: Thank you for your time
3 and attention.

4 (SIDE BAR DISCUSSION, OFF THE RECORD AND
5 OUT OF HEARING)

6 THE COURT: Mr. Dermer, you will be
7 in the pool from which this Jury will be selected.
8 So you are to call that number given to you Friday
9 night after 4:30, for further instructions. I
10 would again remind you that you are not to discuss
11 anything about the case, or read anything or watch
12 anything on T.V. about it. We'll get you back here
13 and we'll have 34 or 35 of you -- pick the Jury
14 from that group. Thank you.

15 (Juror No. 22 excused from the Courtroom.)

16 THE COURT: I have got one thing for
17 the record. Let the record reflect that both Miss
18 Morgan -- that Miss Howard and Mr. Dermer, both
19 sides have passed for cause, is that correct?

20 MR. BAILEY: Yes.

21 MR. JUHASZ: Yes, Your Honor.

22 THE COURT: Fine. Let's take a

1 lunch break. I'll see you at 1:00.

2 (Court in recess at 12:05 p.m.)

3 (Resumed in Open Court at 1:20 p.m.)

4 (Juror No. 38, Douglas Jones, entered the Courtroom.)

5 THE COURT: Good afternoon,
6 Mr. Jones. You read the hand out that was given to
7 you?

8 MR. JONES: Yes, I did.

9 THE COURT: We're here today to make
10 inquiry of two areas, and the first is whether or
11 not you have read anything much about this case
12 that would make it difficult or impossible to set
13 aside any preconceived idea you might have, and
14 whether you would be able to decide the issue based
15 on the evidence that would be presented in the
16 Courtroom.

17 The second issue is to delve into your
18 thoughts about the death penalty. Under Ohio law,
19 just because someone murders another person does
20 not mean that they necessarily have to face the
21 death penalty. Only if there are what we call
22 specifications attached to the aggravated murder

1 charge does that possibility arise. In this case,
2 both of the murder charges have aggravating
3 circumstances attached by way of specification.
4 Now all that means is that during the trial, the
5 Prosecutor is always called upon to prove their
6 case beyond a reasonable doubt. The Defense need
7 do nothing. It's strictly up to the State to prove
8 the charges. If the State fails to do that, then
9 that would be the end of the trial, the Defendant
10 would be released.

11 If the State does maintain their burden
12 of proof and this Jury should return a finding of
13 guilty, then this same Jury would have to go
14 through a second phase, and at that time they would
15 have to listen to the aggravating circumstances
16 presented by way of evidence by the State.

17 Aggravating circumstances are merely
18 reasons that the State would put before the Jury as
19 to why the Jury should consider imposing the death
20 penalty. The Defendant has an opportunity to
21 present what is called mitigating factors and those
22 are reasons why the Jury should not impose the

1 death penalty, but should look to some lesser
2 penalty of life in prison.

3 There's three degrees of that. Some
4 people are of the mind that if you kill someone,
5 you should have your life taken. That is not the
6 law of Ohio. There are other people who could
7 under no circumstances make that decision. And
8 what is needed to have a fair trial for both sides
9 here are people who undoubtedly will have some
10 personal opinion about the death penalty, but they
11 have to be of such a mind that they are able to
12 follow the law. If their personal opinion would be
13 at variance with the law, they would have to set
14 aside their personal opinion and follow the law,
15 and that is to weigh those aggravating
16 circumstances against the mitigating factors. If
17 the State proves beyond a reasonable doubt that the
18 aggravating circumstances outweigh the mitigating
19 factors, then this Jury would be called upon to
20 consider the death penalty.

21 MR. JONES: I understand.

22 EXAMINATION BY MR. BAILEY OF MR. JONES:

1 Q. Good afternoon, Mr. Jones. My name is Ken
2 Bailey. I'm an Assistant Prosecutor with
3 the Trumbull County Prosecutor's Office,
4 and as I promised in Court last week,
5 Chris Becker, another Assistant
6 Prosecutor in our office and my
7 co-counsel, is with us on presenting this
8 particular case.

9 Now, this afternoon we're going to
10 be asking you some questions and the
11 reason that we ask you these questions is
12 to make sure that both sides get a fair
13 shake in this trial, both the Defendant
14 and the people of the State of Ohio. And
15 for that reason, we ask your views on
16 different issues like the death penalty,
17 and there aren't right answer or wrong
18 answers.

19 Under our system, it is important to
20 focus, hold different view points
21 regarding different issues. It is like
22 politics, folks don't always agree on the

1 same candidate or the issues. Same thing
2 with the death penalty. And there's
3 nothing wrong with that.

4 The important thing is we find out
5 if anybody has so much feeling one way or
6 the other that they can't give both sides
7 a fair shake, that they are so far to one
8 side of the issue or the other, that they
9 would either automatically impose the
10 death penalty or never impose it.
11 There's nothing wrong with that.

12 It is just important that we find
13 out who those folks are and they can sit
14 on other Juries like a civil case, as you
15 have. I take it you thought it was an
16 interesting experience?

17 A. Yes.

18 Q. There are other indications where a death
19 penalty is not an option. In this case
20 it is an option. If you have any
21 questions that arises as to what we're
22 doing here, feel free to ask. This is

1 the chance where we get a little give and
2 take here and you understand, that if we
3 run into each other out in the hallway or
4 restaurant or something, we can't have
5 any communication with you until the
6 whole case is over -- both phases if we
7 get to the second phase. We're not being
8 anti-social or anything like that, it is
9 just that under our rules of conduct, the
10 Attorneys can't talk to you or answer any
11 questions until both phases are over.

12 You indicated on your questionnaire
13 and I believe in Court the other day,
14 that you would not be able to decide a
15 death penalty verdict if it was
16 appropriate?

17 A. No, I don't believe I could. I have always
18 been against the death penalty.

19 Q. Is there a reason for that?

20 A. It is just on every level. You have the
21 chance of getting an innocent person and
22 beyond that, I think we have to be above

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1 that. We have to be better than that.

2 Q. So is it based on philosophical belief and
3 ethical belief?

4 | A. Yes.

5 Q. And religious belief?

6 | A. Not really religious, no.

7 Q. It is ethical and philosophical and moral?

8 A. That is it, yes.

9 Q. And how long have you held this belief?

10 A. As long as I can remember.

11 Q. You ever have any personal experience with
12 anybody who had been wrongfully
13 convicted?

14 | A. No.

15 Q. Just reading it?

16	A. Yes.
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17 Q. Are there any circumstances that you can think
18 of where you think the death penalty
19 might be justified?

20 A. No, I can't think of any.

21 Q. I take it you said you expressed an opinion on
22 this in the past. Have you had occasion

1 to discuss the death penalty as a
2 possible punishment or any conversations
3 with family members or friends or any
4 organization concerning your view on the
5 death penalty?

6 A. I debated with people on it before just in
7 conversation.

8 Q. Do you remember for instance, what you talked
9 about? Did anything in particular come
10 up? Any specific case that gave rise to
11 the conversation?

12 A. I can't remember what brought it up. It has
13 come up.

14 Q. A number of times?

15 A. Yes.

16 Q. Would it be fair to say maybe when
17 specifically heinous crimes have come up
18 in the paper or something?

19 A. Yes.

20 Q. And I imagine coworkers or friends would take
21 one view in favor of the death penalty
22 and you would be there opposing the death

1 penalty?

2 A. Or agreeing with them for opposing the death
3 penalty.

4 Q. Now, is your opposition to the death penalty
5 such that you would automatically vote
6 against a sentence of death for this
7 Defendant regardless of the facts of the
8 case?

9 A. Yes, it is.

10 Q. And regardless of the evidence and the
11 instructions of law given to you by the
12 Court?

13 A. I couldn't recommend death.

14 Q. Do you think that -- your opposition to the
15 death penalty -- you understand this case
16 will be tried in two different phases.
17 First phase deals with the issue of guilt
18 or non-guilt. Did she do it or not?

19 The second phase deals with the
20 issue of what the appropriate punishment
21 is for this Defendant, for this crime.
22 Assuming we get to a second phase. If

1 she's found guilty of the crime called
2 aggravated murder and one or more
3 specifications or special findings of
4 fact regarding the death penalty, then
5 the Jury would consider the death penalty
6 as a possible punishment in the second
7 phase.

8 And in a second phase if the State
9 were to convince the Jury by proof beyond
10 a reasonable doubt, doing a balancing
11 test that the aggravating circumstance or
12 circumstances outweigh the mitigating
13 factors, then under the law the Judge or
14 the Jury would have to recommend the
15 death penalty as a punishment. Do you
16 understand that?

17 A. Yes.

18 Q. Now, knowing that we're seeking a verdict for
19 aggravated murder with a death penalty
20 specification, and if the Defendant is so
21 convicted, then as Assistant Prosecutor
22 for Trumbull County, we would be seeking

1 to have the Defendant sentenced to death
2 by you, the Jury, with that type of
3 verdict. Would your opposition to the
4 death penalty be such that it would
5 substantially impair your ability to
6 follow the law, and finding the Defendant
7 guilty in the first phase of aggravated
8 murder with a death penalty
9 specification, when that is proven beyond
10 a reasonable doubt?

11 A. Would it be such that I couldn't return a
12 guilty verdict? I believe I could do
13 that.

14 Q. You could return a guilty verdict?

15 A. I just couldn't recommend death.

16 Q. You are saying you would be able to do your
17 job in the first phase, you would be able
18 to follow the law. If it got to a second
19 phase, no matter what the evidence
20 showed, if we were able to convince, if
21 we were able to put on enough evidence to
22 convince you beyond a reasonable doubt

1 that the aggravating circumstance did
2 outweigh any mitigating factors
3 presented, you would still be unable to
4 follow the law and recommend the death
5 penalty verdict?

6 A. Yes, that is right.

7 Q. And if I understand that, this opposition to
8 the death penalty regarding the facts and
9 circumstances of this case, are such that
10 you could not follow the law that the
11 Judge would give you regarding the second
12 phase?

13 A. Right.

14 MR. BAILEY: Thank you very much.

15 EXAMINATION BY MR. INGRAM OF MR. JONES:

16 Q. Good afternoon. How are you?

17 A. Good.

18 Q. I just have a couple of questions. How do you
19 feel about the American Jury system?

20 A. I think it is impressive.

21 Q. So do I. You understand that the Jury system
22 is predicated upon the theory that if we

1 can put 12 people in this box from
2 different walks of life who have
3 different perspectives, that the 12 of
4 them can hear evidence and then come to a
5 collective decision that then we, and by
6 we, I mean all of us, society as a
7 whole -- can have a great deal of
8 confidence in the fact that that Jury has
9 arrived at a right decision.

10 A. I have seen it happen.

11 Q. Does that make sense, the principles upon
12 which the system is based, do those make
13 sense to you? The theory I have just
14 explained?

15 A. Yes.

16 Q. Do you understand that the Defendant is
17 entitled to a Jury which reflects a cross
18 section of the community?

19 A. Yes.

20 Q. And a Jury which reflects the cross section of
21 the community would have wide ranging
22 views on matters of evidence and

1 punishment. Do you agree with that?

2 A. Yes.

3 Q. There are people in this country who are in
4 favor of the death penalty. There are
5 people in this country who are opposed to
6 the death penalty. You understand that?

7 A. Of course, yes.

8 Q. The State feels it would not be fair to have a
9 Jury composed of people who would not
10 fairly consider the death penalty as a
11 sentencing option, if a sentence ever had
12 to be determined. Do you understand
13 that?

14 A. Yes, of course.

15 Q. The flip side of that is the Defense feels it
16 would not be fair to have a Jury that
17 would not fairly consider the life
18 sentencing options if a sentence ever had
19 to be determined. Do you understand
20 that?

21 A. Yes.

22 Q. And a Jury composed only of people at one of

1 those extremes or the other end of that
2 extreme, whatever the extreme, such a
3 Jury would not reflect a cross section of
4 the community, would it?

5 A. Right.

6 Q. So what we ask jurors to do if they can, is to
7 temporarily set aside their personal
8 beliefs and follow the instructions of
9 the Court. Do you understand that that
10 is what we ask of jurors?

11 A. I do.

12 Q. Do you understand that the law would never
13 require you to vote for a penalty you did
14 not feel was justified by the evidence?

15 A. Yes.

16 Q. And if a Jury were to ever get to a second
17 phase, the Jury would have to weigh
18 aggravating circumstances, bad things
19 against mitigating factors. Do you
20 understand that?

21 A. I do.

22 Q. And as a juror, you would be the sole judge of

1 the weight of the evidence. So what
2 weight to give those aggravating
3 circumstances, what weight to give those
4 mitigating factors, would be up to you?

5 A. Yes.

6 Q. One final question. Knowing all of that, can
7 you temporarily set aside your feelings
8 and follow the instructions of the Court?

9 A. Not on a death recommendation, no, I don't
10 believe I can.

11 MR. INGRAM: Fair enough. Thank
12 you.

13 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT
14 OF HEARING)

15 THE COURT: I have got to ask you
16 something. Any relationship to Eleanor Jones?

17 MR. JONES: No.

18 THE COURT: You are excused from any
19 further participation. We thank you for your time.
20 You have stated your feelings and you are entitled
21 to your feelings. To have a Jury composed of
22 people that feel like you do would not allow the

1 State their fair shot.

2 (Juror No. 38 excused from the Courtroom.)

3 MR. BAILEY: We objected for cause.

4 THE COURT: Court granted that
5 motion over the objection of the Defense. Do you
6 wish to put any reason on the record for your
7 objection?

8 MR. JUHASZ: The only objection
9 would be as to guilt or innocence, Mr. Jones stated
10 that he could be a fair and impartial juror.

11 THE COURT: Thank you.

12 (Juror No. 41, Lisa Jaskowiak, entered the Courtroom.)

13 THE COURT: Before we get involved
14 in the other questions, I notice you have attached
15 a letter here that indicates you have personal
16 problems at home that would make it difficult for
17 you to serve.

18 MS. JASKOWIAK: Yes, Sir, I do, Sir.

19 THE COURT: You didn't hold your
20 hand up the other day when I asked about that.

21 MS. JASKOWIAK: I thought I would be
22 able to rearrange things.

1 THE COURT: You have had these
2 things come up since that time?

3 MS. JASKOWIAK: Yes.

4 THE COURT: Mr. Bailey, rather than
5 me going through the usual, do you have any
6 questions you wish to ask?

7 MR. BAILEY: No, Your Honor.

8 MR. JUHASZ: We have no questions.

9 THE COURT: The letter speaks for
10 itself attached. You have a multitude of problems.
11 Is there any objection to the Court dismissing for
12 cause?

13 MR. INGRAM: No objection from the
14 Defense.

15 MR. BAILEY: No objection from the
16 State.

17 (Juror No. 41 excused from the Courtroom.)

18 (Juror No. 36, Karen Tipton, entered the Courtroom.)

19 THE COURT: Good afternoon. You
20 read that handout that was given to you, right?

21 MS. TIPTON: Yes.

22 THE COURT: You understand why we're

1 here? Donna Roberts, that lady sitting over there,
2 is charged with two counts of aggravated murder
3 with specifications. Under Ohio law, just because
4 a person is found guilty of murder, does not mean
5 that they face the death penalty. It is only under
6 certain circumstances that the legislature has put
7 in the statute. One of them is if you kill the
8 Governor, you can have your life up for grabs. And
9 there are other things too, which will be explained
10 at the proper time, but the important thing to
11 understand at this point is that on the two counts
12 of aggravated murder brought against Miss Roberts,
13 there are specifications.

14 And if the State were able to prove
15 beyond a reasonable doubt first of all, the guilt
16 of the Defendant, and secondly, convince the Jury
17 that the specifications were correct, then that
18 could mean that the case would go to a second
19 phase, where the Jury would be called upon to sit
20 like in a second trial and listen to the
21 aggravating circumstances put forth by the State.
22 If the State is able to prove those beyond a

1 reasonable doubt that they outweigh the mitigating
2 factors presented by the Defense, then the Jury may
3 well be called upon to decide the question of
4 capital punishment.

5 Aggravating circumstances are reasons why
6 the Jury should give the death penalty, and
7 mitigating factors are reasons why they should not.
8 They should give a lesser life imprisonment
9 sentence. You get as many people as we had in
10 there last Tuesday, and you are going to have a
11 wide range of opinions about the death penalty.
12 Some people think that it is outdated, barbaric,
13 and would never under any circumstances participate
14 in any type of Jury. On the other side of the
15 spectrum, you have people who think that if
16 somebody took someone else's life, they should
17 forfeit their life.

18 Well, anybody with those fixed opinions
19 to that extreme could not give both sides a fair
20 trial here. And the whole object, of course, is to
21 get a fair trial. So that means that we need 12
22 people, all of whom are going to have their own

1 opinion about the death penalty. But we need 12
2 who are able to assure these folks that they are
3 able to follow the law, set aside any preference or
4 non-preference they may have in regard to the death
5 penalty and judge the case on the evidence fairly.

6 So part of the questioning here will be
7 designed to see if you are able to do that. You
8 are entitled to your own opinion. We'll all
9 respect your opinion, whatever that is. The other
10 thing that they will ask you about is whether you
11 have read, talked about, heard things about this
12 particular case that have made some lasting
13 impression on you that you could not set aside.

14 Because again, to get a fair trial, all
15 of these jurors are going to have to start out
16 fresh and decide this case only on the evidence
17 presented in this Courtroom. And it would be
18 unfair to one side or the other, if all of the
19 jurors didn't decide the case on what they hear in
20 the Courtroom. You get the idea?

21 MS. TIPTON: Yes.

22 EXAMINATION BY MR. BAILEY OF MS. TIPTON:

1 Q. Good afternoon, Miss Tipton. How are you?

2 A. Fine.

3 Q. My name is Ken Bailey. I'm Assistant
4 Prosecutor with the Trumbull County
5 Prosecutor's Office, and as I promised
6 last week, my co-counsel, Chris Becker is
7 here in the Courtroom today assisting me.
8 And the two of us are going to be
9 presenting this particular case on behalf
10 of the people of Trumbull County and the
11 State of Ohio.

12 Now, as the Judge explained, the
13 reason we're here asking folks questions
14 is because we want to make sure that the
15 people who get to serve on this
16 particular Jury can be fair and impartial
17 to both sides in this trial. Both the
18 Defendant and to the people of the State.
19 And we're not being nosey because we, in
20 asking questions -- we're not being
21 nosey, rather just to make sure that
22 folks can be selected who don't have any

1 extreme bias on either side, so that
2 there are -- especially in a death
3 penalty case sometimes some people feel
4 that they would automatically impose the
5 death penalty as a punishment, and that
6 wouldn't be fair to a Defendant. And by
7 the same token, sometimes people would
8 never be able to impose the death penalty
9 as a punishment in a proper case. And
10 that wouldn't be fair to the State. So
11 that is why we go through this
12 questioning process.

13 Now, there aren't any right answers
14 or any wrong answers to these particular
15 questions, only candid answers as to what
16 you believe and how you feel.

17 A couple of things I wanted to point
18 out. Under our rules of conduct, this is
19 sort of a give and take. If you have any
20 questions that come up that are pertinent
21 to what we're doing here, feel free to
22 ask, and if we can, we'll answer them.

1 Because of our rules of conduct, we're
2 not allowed to have any communication
3 with you outside of the Courtroom after
4 we get done today until the entire trial
5 is done, and that may be one or two
6 phases, depending on how it goes. So,
7 just so you know, if we run into each
8 other in the hallway or elevator or
9 something, we're not being anti-social to
10 either side, we're just not allowed to
11 have any communication with you, because
12 it could result in a mistrial, and we
13 don't want to do it all over again.

14 Now, you had indicated on your
15 questionnaire that you had read in the
16 paper that the Defendant and another man
17 had been indicted?

18 A. Yes.

19 Q. I take it the paper that you get your
20 information from, that was the Tribune,
21 the Warren Tribune?

22 A. Yes.

1 Q. You indicated you read the local news about
2 maybe twice a week?

3 A. Yes, whenever I get my hand on the paper.

4 Q. And what about -- and you watch channel 27
5 every night, pretty much?

6 A. Pretty much.

7 Q. The local news?

8 A. Yes.

9 Q. Other than the fact that they were charged
10 with a crime, did you hear anything about
11 any follow up as to what happened?

12 A. No. I didn't follow it. When something comes
13 out, you look at it or it is just all
14 over the news.

15 Q. The reason we ask these questions about
16 pre-trial publicity is it may well be
17 that during the course of the trial, if
18 you are sitting on this Jury, that you
19 may recollect when you hear some
20 testimony, you may say, "Gosh, I read
21 something about it," or "I remember
22 hearing this on the news," and it may

1 bring in some other facts, and it is
2 important that we start out here with a
3 clean slate. Every case is different,
4 and one thing to notice as we look around
5 the Courtroom today, there's nobody here
6 from the news media and it may well be
7 that when a trial gets started, we'll
8 have a reporter come in, maybe a whole
9 lot of reporters come in. Well, three
10 T.V. stations and two papers, the Tribune
11 and the Vindicator from time to time,
12 they will be popping in -- sometimes with
13 cameras. And they are not allowed to
14 photograph the jurors. They photograph
15 the Attorneys or the Judge or the
16 Defendant, sometimes a witness. But,
17 they are not allowed to photograph the
18 jurors. And that reporter may be here
19 for maybe three minutes or five minutes,
20 and will write a feature based on what
21 they learned in that short period of
22 time. And naturally with that short

1 period of time, they are going to miss
2 everything that was asked and answered
3 before they came in and everything that
4 happens after they leave. So, it may
5 well be that if you sit here as a juror
6 and you have somebody save the newspapers
7 for you and you read them after the
8 trial, after both phases of the trial,
9 then you may say, "Gosh, I sat in Judge
10 Stuard's Courtroom for that entire trial,
11 and reading this newspaper article, it is
12 like they were in Judge McKay's Court
13 reporting on a case, because it certainly
14 doesn't bear much relation to what I
15 remember happening in Court." They just
16 took a little bit and piece out of it.
17 So you understand that is why it is
18 important that you not pay any attention
19 to the news while these proceedings are
20 going on. Do you have any problem with
21 that?

22 A. No.

1 Q. And again, we want to start out with a clean
2 slate. It is like going back to school,
3 and coming to a classroom and the teacher
4 has a chalkboard and whatever you learn,
5 has to be written on that chalkboard here
6 in this Courtroom. And you have to
7 disregard everything else. It is sort of
8 mental gymnastics. We ask you to set
9 everything else you might have learned
10 aside, any information you obtained, any
11 opinions you might have formed, and start
12 from scratch in this Courtroom; can you
13 do that?

14 A. Yes.

15 Q. This is the only fair thing to do to both
16 sides?

17 A. Yes.

18 Q. Now, this is a criminal trial, and the State
19 has to prove the elements of certain
20 crimes that are charged. Elements are
21 essential component parts of a crime. It
22 is sort of like the ingredients in a

1 recipe. Do you ever bake?

2 A. I try.

3 Q. Your Mom ever bake, your grandmother?

4 A. Yes.

5 Q. You have watched your grandmother bake?

6 A. No, but I know about baking.

7 Q. She's got to come up with certain ingredients
8 for each recipe that she has. Do you
9 have any favorite recipes like cakes or
10 pies?

11 A. Potato pie.

12 Q. Sweet potato pie?

13 A. Yes.

14 Q. And I bet your Grandma has a special recipe.
15 She might not have written it down, but
16 she knows it. She's got to have so much
17 of each ingredient. Same thing with a
18 crime. If she makes that sweet potato
19 pie and she leaves out the potatoes, you
20 are going to have some kind of pie, but
21 it won't be a sweet potato pie, right?

22 A. Yes.

1 Q. Same thing with a crime. We'll have -- the
2 Defendant has been charged with a number
3 of crimes, two counts of what we call
4 aggravated murder. Even though there's
5 one person who was killed here, there are
6 two different stories and the State is
7 allowed to pursue two different theories
8 of the crime and prove two different
9 theories. And each of these crimes have
10 different elements.

11 The Defendant is also charged with
12 certain specifications to these counts of
13 aggravated murder. Specification is just
14 a fancy word that means a special finding
15 of fact for a Jury to consider. And so
16 there are two of these specifications
17 attached to each of these counts or
18 charges of aggravated murder. And then
19 there's another two counts that are added
20 on. A charge of aggravated burglary and
21 a charge of aggravated robbery, and each
22 of those has a special finding of fact; a

1 specification of a firearm, that is a
2 working gun was used in the commission of
3 those crimes.

4 Now, you understand that the charge
5 here basically is -- the Defendant is not
6 the trigger person, in these crimes.
7 She's not the person who physically
8 killed the victim, but rather she's a
9 complicitor, somebody who solicited and
10 procured or aided and abetted another
11 person in the commission of these crimes.

12 MR. INGRAM: I object to
13 Mr. Bailey's assertion of fact. He can certainly
14 say that there's an allegation and she's alleged to
15 be, he can not say the Defendant is.

16 THE COURT: I think that is a valid
17 objection. Rephrase.

18 Q. The Defendant is charged with being a
19 complicitor, a person who solicits or
20 procures or aids and abets, helps,
21 encourages, strengthens another person in
22 the commission of the crime. And the

1 charge here is that the Defendant and a
2 fellow by the name of Nate Jackson were
3 involved in planning the murder of a
4 fellow by the name of Robert Fingerhut
5 for insurance money, and that during the
6 commission of the crime, this Nate
7 Jackson broke into the house where Robert
8 Fingerhut lived and killed the victim and
9 also stole a car. And the Defendant is
10 charged with helping him, planning this
11 murder and these crimes.

12 Now, each of these crimes, the
13 aggravated murder for instance as I said,
14 is composed of certain elements. At the
15 end of this case, Judge Stuard is going
16 to give you the law as to what these
17 elements are, but I'm going to give a for
18 instance, like the ingredients in the
19 recipe.

20 We may have to prove that it
21 happened on or about a certain date, for
22 example, December 11 of 2001. Second,

1 that it happened here in Trumbull County,
2 Ohio. And the reason we would have to
3 prove that it happened in Trumbull County
4 is so we could try this case in this
5 Courtroom, in this Courthouse, rather
6 than up in Cuyahoga County. Third,
7 identification. Somebody is going to
8 have to point out that the Defendant is
9 the person in this crime. Fourth, that
10 she acted on purpose, purposely, and the
11 Judge will define that term in detail for
12 you. Fifth, that she caused the death of
13 Robert Fingerhut. And six, that she did
14 it with prior calculation and design. It
15 means it is not like a spur of the moment
16 like if I drop my pen and I catch it
17 instantly with my other hand. That might
18 be a reflex or something, but rather,
19 that there was some advance planning. It
20 is like that old term, you heard that
21 term premeditation under the old law.
22 They changed the law a little bit, so now

1 we call it prior calculation and design,
2 and that also has a specific meaning that
3 the Judge will give you at the end of the
4 case. But it requires some forethought
5 in advance. If I drop my pen and I look
6 down and say, "Gosh, I dropped my pen.
7 I'll have to bend down and pick it up."
8 That requires some forethought and some
9 planning.

10 Can you, if the Judge tells you, we
11 have to prove these elements of each
12 crime whatever those elements are, can
13 you hold us to our burden of proof of
14 proving those particular elements by
15 proof beyond a reasonable doubt?

16 A. Yes.

17 Q. You understand it is only fair, that because
18 the State has charged the Defendant with
19 a crime, we have to prove it. It is
20 basically put up or shut up basically.
21 That is what it comes down to with the
22 trial.

1 You understand the Defendant doesn't
2 have any burden. The Defense, they can
3 just sit there. It is their right during
4 this entire trial to sit there. They
5 don't have to do anything at all. They
6 have no burden of proof. The burden of
7 proof is entirely on us to prove those
8 elements. And because we're lawyers and
9 we're geared toward proving elements of a
10 crime, there may be some questions that
11 may come up in your mind during the
12 course of the trial that may never get
13 answered because you are stuck with the
14 questions that we ask.

15 And in some other places, some other
16 states maybe, they may allow jurors to
17 submit questions to the Judge, to ask the
18 witnesses, but that doesn't happen in
19 Ohio. In Ohio, you are stuck with the
20 questions that the lawyers ask. And you
21 got to pay close attention. You ever
22 listen to the radio when you were a kid,

1 other than music?

2 A. Yes.

3 Q. You ever listen to soap operas on the radio?

4 A. Yes.

5 Q. Remember when you did that, you paid close
6 attention to what was, because there
7 weren't any instant replays, were there,
8 on the radio?

9 A. No.

10 Q. And we're going to ask you to do the same
11 thing with the other jurors. There are
12 going to be 12 of you on there, and you
13 will hear the testimony of the witnesses,
14 and then at the end of the case -- and
15 the trial might last up to two weeks.
16 You are going to have to remember the
17 testimony day-to-day as it goes on, and
18 then, you and the other 11 jurors will go
19 back and deliberate and you would have to
20 remember what the witnesses said. Unlike
21 a trial like O.J. Simpson where they may
22 have instant transcripts, where they got

1 million of dollars worth of equipment and
2 a lot of Court Reporters. We have one
3 Court Reporter, Mary Ann Mills, but she
4 can't get us instant transcripts. If you
5 and the other jurors ask, "Can we get the
6 testimony of so and so, a transcript of
7 the testimony?" That is not going to
8 happen. The Judge is going to tell you
9 most likely that you will have to rely on
10 your collective recollection of the
11 testimony. You think you would be able
12 do that?

13 A. Yes.

14 Q. Another thing is you can't take notes. Unlike
15 going to college and going to class and
16 taking notes that you are used to doing.
17 In Ohio, you can't take notes. You have
18 to -- the reason for that is they want
19 you to pay close attention to the
20 witnesses, to watch their demeanor when
21 they testify, and if you take notes,
22 somebody may think one thing is important

1 and somebody else may think something
2 else is important and you might give too
3 much credence to one person's notes over
4 another. You know back in school, some
5 people are better note takers than
6 others, right?

7 A. Yes.

8 Q. You are going to have to pay close attention
9 to that. Now, we mentioned the
10 specifications that are attached to the
11 count of aggravated murder. And there
12 are two of these specifications. The
13 first specification or special finding of
14 fact for the Jury to consider is the
15 charge of aggravated burglary, that the
16 aggravated murder was committed during an
17 aggravated burglary, and that the
18 Defendant committed the aggravated murder
19 with prior calculation and design. And
20 the second specification to the charge of
21 aggravated murder is that the aggravated
22 murder was committed during an aggravated

1 robbery and the Defendant committed the
2 aggravated murder with prior calculation
3 and design. Remember she's not the
4 triggerman. There's a difference between
5 aggravated burglary and aggravated
6 robbery; and basically, the Judge will
7 define those terms for you, but
8 basically, sometimes folks get confused.
9 Every day on the street, when you hear
10 the terms, somebody says, "I was robbed,"
11 and they came home and said, "I was
12 robbed." They really mean their home was
13 burglarized. Burglary refers to the
14 trespass inside an occupied structure, a
15 dwelling house, where somebody may be
16 present and the bad guy comes in and
17 maybe with a weapon and maybe causes
18 serious physical harm to that person.

19 An aggravated robbery usually refers
20 to taking property of another by force or
21 threat of force, and a person may be
22 armed with a gun and may cause serious

1 physical harm to the victim. So, there's
2 a distinction there.

3 Now, this type of trial that we have
4 as the Judge indicated, this case can be
5 tried in two different phases. The first
6 phase deals with the issue of guilt or
7 non-guilt of these crimes that are
8 charged, and the first phase is tried
9 just like any other criminal case that is
10 tried in this Courtroom. Whether it is a
11 theft case or a robbery or burglary or
12 aggravated murder with specifications.

13 And if you and the other jurors
14 decide the Defendant is guilty of a crime
15 called aggravated murder with one or more
16 of these specifications, the special
17 findings attached to it, then we would
18 move onto a second phase, and in the
19 second phase, the issue there is the
20 issue of punishment. What is the
21 appropriate punishment for this Defendant
22 for this crime? You understand that the

1 death penalty is not an automatic
2 punishment?

3 A. Yes.

4 Q. Because it wouldn't be fair to a Defendant if
5 the death penalty were an automatic
6 punishment because you wouldn't have
7 heard anything in favor of a Defendant
8 mitigating against the death penalty as a
9 punishment in the first phase, because it
10 is not relevant. In the first phase, the
11 only issue is guilt or non-guilt. When
12 you get to the second phase, you have
13 already decided guilt. And then the
14 issue there would be, what are the
15 aggravating circumstances, and then what
16 mitigating factors or things that are in
17 favor of the Defendant that work against
18 the death penalty, what is going to be
19 presented here. And you may hear
20 additional testimony in the second phase.

21 And then you would have to do a
22 balancing test. You would have to

1 balance on one hand or weigh the
2 aggravating circumstance or circumstances
3 on one side of the scale against whatever
4 mitigating factors are presented. And
5 you understand it is entirely up to you
6 and the other jurors how much weight you
7 want to give to these mitigating factors
8 and aggravating circumstances. And if
9 you find that we prove that the
10 aggravating circumstance or circumstances
11 outweigh these mitigating factors beyond
12 any reasonable doubt, then you must
13 return a verdict as to the death penalty.
14 You understand that? It is not
15 automatic, but if we convince you of
16 that, then you must come in with that
17 verdict. Will you have any problem with
18 that?

19 A. No.

20 Q. Now, let's say that we don't convince you
21 beyond a reasonable doubt that the
22 aggravating circumstance outweighs the

1 mitigating factors. Then in that case,
2 you would have to go on and consider one
3 of the three possible life sentences.
4 Life in prison without any possibility of
5 parole. Life in prison with parole
6 eligibility after 30 full years, and life
7 in prison with parole eligibility after
8 25 full years. You understand that? You
9 would be able to consider those factors
10 equally, right?

11 A. Yes.

12 Q. Now, you had mentioned on your questionnaire
13 that you thought there were some problems
14 in the criminal justice system,
15 unfairness due to prejudices. What do
16 you mean by that?

17 A. Because some people don't get a fair trial
18 because of who they are. It depends on
19 where you live. If you are poor, if you
20 are wealthy, depends on what kind of
21 trial you get. I think I mean if it is
22 going to be equal, it should be one

1 standard, not a whole bunch for this race
2 of people or that race of people or who
3 is involved.

4 Q. Okay. And you say there would be a
5 discrepancy in the way the criminal
6 justice treats people depending maybe on
7 race or their wealth?

8 A. Yes.

9 Q. Or lack of wealth?

10 A. Yes.

11 Q. Do you think we would be able to get a fair
12 trial in this particular case?

13 A. Yes, I believe we should be able to, if
14 everybody is doing their job.

15 Q. Now, you indicated your feelings about the
16 death penalty. Had you ever engaged in
17 any discussions or conversations with any
18 family members or friends about your view
19 on the death penalty?

20 A. No.

21 Q. Back in school, you ever have to take a speech
22 class or debate class where you had to

1 present a side?

2 A. Not on the death penalty.

3 Q. How about, did you ever belong to any
4 organization where you had to express
5 your view on the death penalty?

6 A. No.

7 Q. Did it ever come up maybe in church expressing
8 your view on the death penalty as a
9 possible punishment?

10 A. It may have been brought up through the pastor
11 or something, but it didn't phase me.

12 Q. In church, does your religion prohibit or
13 favor the imposition of the death
14 penalty?

15 A. It has never been brought up.

16 Q. Your view about capital punishment, the death
17 penalty, I take it you are in favor of
18 the death penalty as a punishment?

19 A. Yes, if all of the facts are brought out.
20 Depends on the crime. I think it depends
21 on the crime. It is just senseless.

22 Q. Senseless murder?

1200

1 A. Yes.

2 Q. Would you -- for which senseless crimes would
3 you think the death penalty would be
4 appropriate?

5 A. It deals with facts also what brought it to
6 that point. If I was saying anything
7 right now, it, be like on children, the
8 senseless things on children. On
9 innocent people.

10 Q. And it would be a killing, right?

11 A. Yes.

12 Q. You understand that not all killings are
13 punished by the possibility of the death
14 penalty? Because there are some killings
15 that may be accidental. Somebody may be
16 out chopping wood and the head of the axe
17 flies off and strikes somebody.

18 A. I understand that. I'm not saying just
19 because you kill somebody, you get the
20 death penalty. I'm not saying that.
21 Like you said, some killings are -- I
22 mean sometimes you may have to hurt

1 someone because, to save your own life.

2 Q. That might be self-defense?

3 A. Yes.

4 Q. There may be some killings that are done in
5 the heat of passion, a wife comes in and
6 sees her husband in bed with another
7 woman, and she may get a gun if she has a
8 gun nearby and just pick it up and shoot
9 it, right? Or things like that. But
10 something that -- what about killing that
11 is planned in advance? Do you think that
12 may make a person eligible for the death
13 penalty?

14 A. If all of the facts are in and it weighs that
15 way, and it is planned out to hurt
16 somebody, yes, I guess.

17 Q. I'm just saying, it makes them eligible for
18 the death penalty as punishment. Not
19 that it would be automatic punishment.
20 Because you wouldn't have heard anything
21 at the beginning of whether there was
22 anything in behalf of the Defendant's

1 favor that would prevent the death
2 penalty. Your view about the death
3 penalty, have those views changed over
4 the years or did you always have this
5 opinion?

6 A. I guess it has probably changed over the
7 years. I got a son, a grown son, and I'm
8 saying if someone did something to him
9 that was just senseless, then yes, I
10 think that it changed over the years.
11 Instead of before you say well, if
12 something happened to my family member,
13 but you never know how you feel about
14 different things.

15 Q. When you were younger, did you favor the death
16 penalty or were you against the death
17 penalty?

18 A. I don't think it even phased me when I was
19 younger.

20 Q. You didn't have any feeling about the death
21 penalty?

22 A. I think because now we live in a society where

1 things are done so many times to innocent
2 people, because we're living in that
3 time.

4 Q. Do I understand it correctly, that as you got
5 older, you began to favor the death
6 penalty more for certain crimes because
7 of seeing all of the senseless crimes?

8 A. Yes.

9 Q. Now, you wrote down on your questionnaire,
10 there's a question, "Why do we have the
11 death penalty?" And you wrote down a
12 misinterpretation of the Biblical term,
13 an eye for an eye, a tooth for a tooth.
14 What do you mean by that?

15 A. Misinterpretation, I think, because it was
16 somebody that got killed, so they would
17 kill them. If somebody stole something,
18 they would cut off their arm. I think in
19 those times, no questions asked.

20 Q. It was sort of like an automatic punishment?

21 A. Yes.

22 Q. And you would take into and didn't take into

1 consideration that would work in the
2 Defendant's favor as to whether maybe a
3 person, if he stole a loaf of bread,
4 maybe he was starving?

5 A. But they didn't care back then.

6 Q. Now, you understand that under our system of
7 justice, the Defendant is cloaked by the
8 presumption of innocence. That cloak of
9 the presumption of innocence surrounds
10 her all through the course of this trial,
11 all the way up to the time that all of
12 the evidence is in and the Judge
13 instructs you on the law and you go back
14 into your Jury room to deliberate with
15 the other jurors, on the guilt of the
16 Defendant, whether she's guilty or not.
17 And I take it you agree with that
18 presumption of innocence?

19 A. Yes.

20 Q. It is only fair, because some other countries,
21 maybe in France, they don't have that
22 presumption. The Defendant has to prove

1 their own innocence in certain countries,
2 but in this country, that is not our
3 system. Our system is the Defendant is
4 presumed innocent and it is up to the
5 State to prove the crimes by proof beyond
6 a reasonable doubt.

7 Now, of course, if you go back in
8 the Jury room with the other jurors at
9 the end of the case and you find we have
10 been able to prove these elements of the
11 crime charged by proof beyond a
12 reasonable doubt, then of course, that
13 cloak or the presumption of innocence
14 would be gone, right?

15 A. Yes.

16 Q. Because then you would be convinced that she
17 was guilty after considering all of the
18 facts and the evidence. That may well be
19 during the course of the trial, because
20 we gear our questions toward proving
21 these elements of the crimes, the
22 ingredients in the recipe that you may

1 have some questions that never get
2 answered.

3 For example, if you had -- I know my
4 wife has like 50 million pairs of shoes.
5 You might have some interest in footwear,
6 what somebody was wearing. And if it had
7 no bearing on proving the facts of this
8 particular case, we may never get into
9 what somebody was wearing at the time.
10 And it would be an unanswered question.
11 But if you felt it had no bearing on
12 proving the elements, then you would be
13 able to reach your decision without those
14 questions ever being answered, right?

15 A. Yes.

16 Q. It sounds sort of silly. Now, we talk about
17 proving the case beyond a reasonable
18 doubt. You have heard that term before?

19 A. Yes.

20 Q. You understand the Judge is going to define
21 that term for you, but basically it talks
22 about the use of your reason and common

1 sense. That is something you deal with
2 in your every day life, isn't it?

3 A. Yes.

4 Q. Especially raising a child, you use a lot of
5 reason and common sense. You have to
6 gauge the credibility of people,
7 including your children. Having kids, we
8 know when your kids are lying or not,
9 right?

10 A. Yes.

11 Q. And the same test that you use in determining
12 other people's truthfulness outside of
13 the Courtroom, these are the same tests
14 you use in determining the credibility or
15 truthfulness of the witnesses who take
16 the stand. There's nothing magical about
17 it. It is something you are used to
18 doing in your every day life. You would
19 be able to do that?

20 A. Yes.

21 Q. Now, when we use this term proof beyond a
22 reasonable doubt, you understand that it

1 is not proof beyond all doubt or beyond a
2 shadow of a doubt? Sometimes folks read
3 books and they watch movies and Hollywood
4 productions. And those terms are sort of
5 bandied about. There's an Alfred
6 Hitchcock movie called "Shadow of a
7 Doubt," but there's no such animal in
8 criminal law in this State or in this
9 country. Do you understand that?

10 A. Yes.

11 Q. It is like 100 percent proof. It is like if
12 you fill up a box and you have got to
13 fill it up to a certain point in there,
14 where you are convinced that it proves
15 the Defendant's guilt as to these
16 elements. Doesn't have to go all the way
17 to the top with stuff that you put in the
18 box, but just enough so that you are
19 firmly convinced of the truth of the
20 charge to a moral certainty. You think
21 you would be able to do that?

22 A. Yes.

1 Q. Now there's different types of evidence that
2 we can use to prove our case. There's
3 what we call direct evidence, where a
4 witness can come in and testify to the
5 use -- or to what he's learned through
6 the use of his five senses like, "I heard
7 the gunshot. It was loud." Or "I
8 smelled the smoke, and it was acrid," or
9 "I touched the body and it was cold."
10 But there's another type of proof. That
11 we have it is sort of round about proof.
12 It is where you are presented with a fact
13 or a series of facts, and then you are
14 asked to make a logical deduction to
15 another fact or facts. You have done
16 that in college, right?

17 A. Yes.

18 Q. You do it in your every day life?

19 A. Yes.

20 Q. And we call that circumstantial evidence. And
21 there's a reason for it. I would expect
22 that you would believe that most serious

1 crimes are committed in secret without a
2 whole lot of people around, right?

3 A. Yes.

4 Q. Especially when we're talking about a crime
5 like murder. Usually it is not committed
6 on the Courthouse steps with everybody
7 taking pictures of the crime. And if
8 planning would occur for that, it would
9 again happen in secret, right?

10 A. Yes.

11 Q. Rather than having people yell out to the
12 whole world what they are planning. And
13 because of that, we have to rely on,
14 unless somebody tells you what they are
15 planning, you have to rely on looking at
16 what their actions are, and if you can
17 learn what they are thinking of in some
18 way. May be with letters, or phone
19 calls, perhaps, if you had things like
20 that.

21 Circumstantial evidence. Let's
22 say -- let me give you an example of

1 that. Let's say you go to bed at night.
2 You live in a two story house and you
3 look out across your neighborhood before
4 you go to sleep and it is a nice night.
5 The moon is beaming, not a cloud in the
6 sky, and you draw the blinds and before
7 you fall asleep, you listen to the
8 weather forecast on the radio and the
9 weatherman says, "We're getting a cold
10 front in, so we're going to get a storm
11 overnight." And you shut off the radio
12 and you go to sleep and at some point you
13 fall asleep. And you have awakened in
14 the middle of the night by -- you look
15 toward the window and even though the
16 blinds are drawn, you can see there's a
17 flash outside and a couple of seconds
18 later, there's a distant booming sound.
19 And a few seconds later another flash and
20 in closer in time another booming sound,
21 and suddenly there's a big flash outside
22 the window and great big boom above the

1 house and pitter patter on the house and
2 a drumming sound on the roof. And you
3 fall back asleep and you get up the next
4 morning. You open up the blinds and you
5 open up the window. Sun is shining, not
6 a cloud in the sky, but as far as you can
7 see, the rooftops are wet, the streets
8 are running with water and there's no
9 fire hydrant outside where any driver
10 could have hit it and knocked water all
11 over the place. You know what happened
12 during the course of the night, don't
13 you?

14 A. Yes.

15 Q. What happened?

16 A. It rained. A storm came.

17 Q. And you know that beyond any reasonable doubt,
18 don't you?

19 A. Yes.

20 Q. You learned it by circumstantial evidence,
21 right? You didn't see the rain with your
22 own eyes, but based on everything, all of

1 these facts and circumstances surrounding
2 that, you know there was a thunder storm?

3 A. Yes.

4 Q. There's room in there for some possible or
5 imaginary doubt. You can imagine that
6 during the night, E.T. flew by and
7 sprinkled some wet stuff, but that would
8 be a foolish or imaginary doubt, wouldn't
9 it?

10 A. Yes.

11 Q. You know beyond any reasonable doubt that all
12 that happened was there was a thunder
13 storm.

14 A. Yes.

15 Q. Now, would you be able to return a conviction
16 in this case, if we were able to convince
17 you of the elements of the crime, using
18 circumstantial evidence, so that we
19 convinced you beyond a reasonable doubt,
20 as to these particular elements of the
21 crimes charged?

22 A. Yes.

1 Q. Now, you would be able to pile evidence on
2 evidence and make your own decision as to
3 if there's enough and follow what the
4 Judge will tell you, right?

5 A. Yes.

6 Q. You believe people should be held accountable
7 for their actions?

8 A. Yes.

9 Q. One other thing, you can't go out on your own
10 to investigate. You will hear about
11 testimony about this happening in a
12 certain neighborhood in this county up in
13 Howland. And you understand it would be
14 improper for a juror to go out and
15 conduct your own investigation for
16 whatever reason, either to look at the
17 scene yourself or different things like
18 that. It could cause a mistrial. The
19 reason I mention this is we had one case
20 where a juror did go out. There were
21 movies where jurors go out, and that is
22 T.V., and you can't do that in real life.

1 A. Okay.

2 Q. And the reason I ask some of these silly
3 questions is, things like that have
4 happened. Now, you understand that
5 sometimes we catch people because some
6 criminals may be sort of silly or not the
7 brightest in the world, like I imagine
8 you have heard stories on T.V. or radio,
9 about the criminal armed robber who goes
10 into the bank to hold up the bank, hands
11 them a note with writing on the back of
12 the envelope and gets the money and they
13 turn the note over afterward and it has
14 got the Defendant's address on it; or the
15 burglar who leaves his wallet at the
16 crime scene, breaking into the house, he
17 drops his wallet. You have heard stories
18 like that over time?

19 A. Yes.

20 Q. Or the robber who goes in the bank and is
21 caught on video tape and he's not wearing
22 a mask and they got his picture all over

1 the place. You know that criminals don't
2 have to be the brightest in the world,
3 right?

4 A. Yes.

5 Q. Now, there's something called sequestration.

6 All that means is at the end of the first
7 phase, the jurors are kept together when
8 you go out to deliberate and you can't go
9 home during that time at the end of the
10 first phase. The Judge will give you
11 enough notice to be able to bring in a
12 suitcase, and each juror is different.
13 Sometimes some folks may take a couple of
14 hours, and it may take several days to
15 reach a verdict in a case. If they reach
16 a verdict and you would have to be kept
17 together during that period of time. You
18 wouldn't be able to discuss the case
19 outside the presence of the other 11
20 jurors. You have to all be together when
21 you are talking about it. Would you be
22 able to do that?

1 A. Yes.

2 Q. Now, there's a second time where you may get
3 sequestered if the Jury comes back with a
4 guilty verdict in the first phase finding
5 the Defendant guilty of aggravated murder
6 with one or more of these specifications
7 and you go on to the second phase. You
8 go home in between, but then you would be
9 hearing more testimony in the second
10 phase and that could take anywhere from
11 one to three days, and then you would be
12 sequestered at the end of that second
13 phase while you are deliberating. And
14 again, we don't know how long that would
15 take. It could be a couple of hours, it
16 could be a couple of days. It is up to
17 the Jury. Would you have any problem
18 with being sequestered a second time?
19 Now, I am almost done.

20 During the course of the trial as
21 you come face to face with the Defendant,
22 perhaps as her chair is turned towards

1 you perhaps you will become more
2 acquainted with her. And my question to
3 you is this. When you go back inside the
4 Jury room to deliberate on your verdict,
5 can you lay aside all thoughts you might
6 have of sympathy for the Defendant, and
7 be conscientious in your deliberations
8 and base your verdict on the evidence and
9 testimony that you get, and the
10 instructions of law given to you by the
11 Judge, and lay aside all thoughts
12 whatsoever of sympathy that you might
13 have for the Defendant?

14 A. Yes.

15 Q. Now, do you have any pressing matters at home
16 or work that are going to affect your
17 ability to concentrate on the testimony
18 of the witnesses and the evidence?

19 A. No.

20 Q. Under our system of Government, there's
21 certain obligations that we have as
22 citizens. One of them is if it is

1 election time, we're supposed to learn
2 something about what is going on in the
3 world around us and candidates, the
4 issues and go out and cast a ballot.

5 Another obligation of citizenship is
6 if we're at war, we may have to serve in
7 the military. And we have got young
8 people, young men and women overseas in a
9 couple of places today.

10 Another obligation of citizenship is
11 if we're summoned in as jurors, it is
12 important that we get people from all
13 walks of life in the community to serve
14 on a Jury, if at all possible, to make
15 sure our system of justice works. Would
16 you be willing to undertake that
17 obligation?

18 A. Yes.

19 Q. And make sure our system works?

20 A. Yes.

21 MR. BAILEY: Thank you very much.

22 EXAMINATION BY MR. JUHASZ OF MS. TIPTON:

1 Q. Good afternoon. I don't know if you remember
2 from last week, I am John Juhasz, and
3 that is Jerry Ingram over there, and
4 Jerry and I are representing Donna
5 Roberts, who is also sitting over there.
6 What we're doing is sort of like a job
7 interview where we're interviewing you
8 for the job of being a juror. And as you
9 know from what has already been told to
10 you here today and what you have read, it
11 is a pretty serious job, because you are
12 deciding the truth, the guilt or
13 innocence of the charges, and you may be
14 deciding the fate of another individual.
15 That is the reason why we take this much
16 time and that is the reason why we ask
17 you some questions like you might be
18 asked in a job interview. That might
19 seem a little tougher or a little more
20 prying than maybe you would like. If I
21 do that, please don't take offense. It
22 is simply part of the process. If we

1 were going to test to see how strong the
2 sleeve was on this coat I am wearing, I
3 would have to do that by tugging on it,
4 but so if I tug a little bit, please
5 forgive me, all right?

6 You have heard a little bit about
7 this case from the Tribune and I am
8 interested in what impressions those
9 things left in your mind. And I
10 understand and appreciate before you
11 answer it, that you may have forgotten
12 all about that until you got back to the
13 Courthouse and said, "Yes, Donna Roberts,
14 I read something about that." But
15 assuming that is what happened and I see
16 you nodding your head, is that pretty
17 much what happened or did you sort of
18 have this case in your mind when you got
19 here?

20 A. No. I didn't follow it. All I know is like a
21 woman and a man and a murder.

22 Q. When you read the articles in the Tribune,

1 what impression did they leave with you?
2 Did they leave the impression that these
3 people probably did this or what?

4 A. I didn't give much thought to it.

5 Q. How about when you came to the Courthouse last
6 week and found out what case it was, and
7 then you sort of thought back to what you
8 had read. What was left in your mind
9 then?

10 A. It wasn't nothing left in my mind. That is
11 the lady. That is all.

12 Q. We had a juror -- well, actually let me ask
13 you a couple of other things. Since you
14 have been hanging around the Courthouse
15 and I know you have been here for a
16 little bit and we apologize for that. We
17 do the best thing with scheduling, but it
18 doesn't always work out too well. Since
19 you have been hanging out around the
20 Courthouse, have you heard the case
21 discussed, Miss Roberts, or anything
22 about her case or anything like that?

1 A. No, Sir.

2 Q. Have you seen anybody in the Courthouse who
3 you know? One of the other jurors, I
4 notice, lives on the same street as you
5 and are you acquainted with her or not?

6 A. She used to go to my church.

7 Q. Did the two of you see each other in the
8 Courthouse or anything like that or have
9 any conversations?

10 A. Yes. "Hi, how are you doing?" That is it.

11 Q. If she's selected as a juror and you are
12 selected as a juror, is there anything
13 about your past acquaintanceship that
14 would cause you to hesitate to express or
15 stick to your views?

16 A. No.

17 Q. Particularly let's say that she ends up on one
18 side of the case when you are in the Jury
19 room and you end up on the other side, is
20 there anything about that relationship
21 that would cause you to surrender your
22 honest convictions about how you viewed

1 the evidence?

2 A. No.

3 Q. One of the reasons that we do this is to find
4 out, even though you have read some
5 things, whether you are able to set that
6 aside. And let me sort of jump ahead a
7 little bit and talk for a second about
8 the burden of proof in this case. You
9 heard Mr. Bailey talk a little while ago
10 about a box. And I agree with him in
11 this case, the State of Ohio has to fill
12 up a box. Somewhere pretty far up on
13 that box is a line called reasonable
14 doubt. He doesn't have to prove his
15 case, he and Mr. Becker. They don't have
16 to prove their case beyond a shadow of a
17 doubt or beyond all possible doubt or
18 imaginary doubt. So, I guess the
19 difference between what he's got to prove
20 and what is left in that box would be
21 shadow of a doubt and imaginary doubt and
22 all of that.

1 What I'm trying to find out from you
2 is, and only you can answer this. Is
3 there anything that you have read about
4 this case or having heard us talk about
5 it now that brings back what is in those
6 articles that in essence constitutes
7 stuff that is already in the box, or can
8 you start this case with the box being
9 empty?

10 A. It would have been empty.

11 Q. Let's say that, and I like to think that this
12 is a normal psychological human reaction,
13 but I don't know. Sometimes my wife will
14 tell me something, and I'll swear up and
15 down that she has not told me, and then
16 minutes, days, or months later, something
17 will happen and I'll go, "You know what,
18 I apologize, you did tell me about that."
19 I couldn't remember it, but whatever it
20 was, made me think about it. Has that
21 ever happened to you, where you don't
22 think that you know something or you have

1 been told something, but something else
2 happens later on to make you realize that
3 you had been told something about this?

4 A. Yes, I guess.

5 Q. Here's the reason I bring that up. If we sit
6 here now and say, "Here's a pen and a
7 piece of paper. Write down everything
8 you remember reading about Donna Roberts
9 and the case." I am suspecting that what
10 you would write down is pretty much what
11 you told is here today, correct?

12 A. Yes.

13 Q. As the case goes on, you may hear things that
14 may make other articles that you have
15 read that you can't presently remember,
16 pop back into your head. And I want --
17 and that is okay, except I want to find
18 out a couple of things about that.
19 First, you can't let those articles
20 substitute for evidence in this case.
21 I'm sure you appreciate that, correct?

22 A. Yes.

1 Q. Secondly, if you hear something in the
2 Courtroom, and you go, "You know what, I
3 remember reading something like that."
4 What I need from you is an assurance that
5 even if what you hear in the Courtroom
6 matches what you read in the paper
7 before, you won't let that substitute for
8 your job as a juror of deciding whether
9 or not this person is telling the truth.
10 Am I making that clear?

11 A. Yes.

12 Q. If a witness gets on the stand, part of your
13 job is to decide whether that witness is
14 telling you the truth or not, you
15 appreciate that?

16 A. Yes.

17 Q. And you need to do that independently, not
18 say, "You know what? What that guy just
19 said is what I read in the Tribune six
20 months ago, so therefore he's telling the
21 truth." You appreciate that would be an
22 incorrect way of doing it?

1 A. Yes.

2 Q. Any problem with doing that?

3 A. No.

4 Q. Let's say that -- well, I'm sorry, before I
5 ask you that. Is there anything else
6 that has come into your mind that you may
7 have heard or read about this case, since
8 people have been talking to you today?

9 A. No.

10 Q. You know that there have been some things in
11 the paper and you know that the
12 Government has made allegations against
13 Donna Roberts, correct?

14 A. Yes.

15 Q. Let's say that the Government does not fill up
16 that box we were talking about a minute
17 ago. Would you have any hesitation to
18 vote and say, "Well, I have to find her
19 guilty because they brought these charges
20 and there was all of this stuff in the
21 paper"? Would you still have the courage
22 to say, "They didn't prove the case, so

1 I'm going to find her not guilty"? Would
2 you have any problem doing that?

3 A. No problem.

4 Q. Do you have any thought in your mind that
5 because we're talking to you and asking
6 you questions now about the death penalty
7 case, and about the death penalty, that
8 well, Donna Roberts has to be guilty or
9 else these guys wouldn't be asking me
10 these questions?

11 A. No. I think you are just doing your job.

12 Q. You appreciate we have to have rules for
13 everything we do, otherwise, all of us
14 being lawyers and liking to talk, me and
15 Mr. Bailey and Mr. Becker and Mr. Ingram
16 would be all saying, "Let me go first."
17 We have to have rules and procedures for
18 how we do things. You appreciate that?

19 A. Yes.

20 Q. And part of that as Mr. Bailey said to you,
21 this is the only time we get to talk to
22 you during the case, so we have to talk

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1 about everything that might possibility
2 happen. Are you okay with that?

3 A. Yes.

4 Q. You don't have any thought in your mind,
5 "Well, these guys are talking to me about
6 the death penalty, we must be getting to
7 the second phase"?

8 A. No.

9 Q. Are you comfortable that you understand
10 basically how those two phases work, that
11 is what happens at each phase?

12 A. Yes.

13 Q. You are soft spoken, so I want to make sure
14 that I heard what you said before.
15 Mr. Bailey asked you some questions and
16 you put some things in your questionnaire
17 about problems that you see in the
18 criminal justice system, and if I
19 understood you, and please don't let me
20 put words in your mouth, I'm just trying
21 to keep this moving along. Basically,
22 you see some problems with the system

1 because depending upon your race or
2 depending upon your affluence or lack of
3 it, you may not necessarily get a fair
4 trial?

5 A. Yes, that is what I'm saying.

6 Q. Help me out with that just a little bit more.
7 Who in your mind has been the victim of
8 those injustices?

9 A. I am thinking over a time period. People in
10 the south. That is what I am thinking
11 about, they weren't given fair trials.
12 If they caught them, then they right then
13 and there, they were guilty.

14 Q. There were a number of cases like that, some
15 very interesting law actually began to
16 develop in the 30's and the 40's as a
17 result of those types of cases. And you
18 are basically talking about lynch mob
19 trials, where they grab guys -- and let's
20 not pull punches, most of those cases
21 were the big pot bellied one southern
22 sheriff with the drawl, going out and

1 grabbing three or four black guys that
2 someone said did something, and before
3 you know it, were tried if at all, and
4 executed. Is that what you are talking
5 about?

6 A. Yes.

7 Q. Do you still see any of that stuff going on
8 today?

9 A. I think it still goes on, but not to a point.
10 I think it is under cover.

11 Q. Now, Miss Roberts is white. She's a female.
12 Do you have any perception from what you
13 think about the criminal justice system
14 that she might not be able to get a fair
15 trial here?

16 A. No. I don't think so.

17 Q. And of course, the other thing is that even if
18 you perceive those shortcomings in the
19 system and I might be well inclined to
20 agree with you, you appreciate that both
21 of us doing our jobs in this case, can't
22 do anything to deviate from what we have

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1 to do. We can't sort of make up for past
2 injustices?

3 A. I am.

4 Q. You are okay with that?

5 A. I am okay with that.

6 Q. I want to talk to you for a little bit about
7 your views on the death penalty, and some
8 of the things that you have written and
9 some of the things that you have said.
10 And I want to make sure that I understand
11 them. In your questionnaire when we
12 asked what were your views concerning
13 capital punishment, you said making sure
14 that all of the facts are presented in
15 the case. And I want to press you for a
16 minute about that. Are you saying that
17 before you can consider the death
18 penalty, you would have to make sure that
19 the Defendant's guilt is established
20 unquestionably -- or don't let me put
21 words in your mouth. What are you saying
22 there?

1 A. Ask that again.

2 Q. You put in your questionnaire when we said,
3 "What are your views concerning capital
4 punishment?" You said, "Making sure that
5 all of the facts are presented in the
6 case."

7 A. That is nothing is left out to bring you to
8 that point, because sometimes if
9 something is left out, or a witness isn't
10 presented that could have been, could
11 have worked in their case, but that is
12 what I'm saying.

13 Q. You also talk about senseless killings and
14 about the killings of innocent people.
15 And I am wondering what are your thoughts
16 about the death penalty in relation to
17 that? Are you saying that any time a
18 killing is senseless, that the person
19 should get the death penalty?

20 A. No, I'm not saying any time. I mean if it
21 goes to Court like that, and it is just
22 something that could have been done

1 without. It shouldn't have even
2 occurred.

3 Q. We have had a couple of examples that we used
4 during the course of this trial, and let
5 me go back and talk with you about one of
6 them. Let's say that facts are presented
7 to you that I walked into a 7-11 or a
8 Dairy Mart or whatever, and pulled out a
9 gun and said to the teller, "Give me all
10 your money." That is what lawyers would
11 typically call an aggravated robbery
12 because we're taking property from
13 somebody and we're using force to do it.
14 A gun. And so the teller or the clerk
15 gives me the money, and then as I'm ready
16 to leave and they are looking scared and
17 they are going, "Please don't hurt me,"
18 and I just go boom and they are dead.
19 Now, I think just about everybody on the
20 planet can agree that would be a
21 senseless killing, correct?

22 A. Yes.

1 Q. And my question to you is in that type of fact
2 situation, is your view of the death
3 penalty such that I should get the death
4 penalty for that, because that was a
5 senseless killing?

6 A. Honestly, I would say yes, because you had the
7 opportunity to get away.

8 Q. If in a case like that, you found me guilty at
9 the first phase of the trial, that is,
10 you found that I did the robbery and the
11 murder, and now we went to the second
12 phase, is the death penalty -- and you
13 found that I had a chance to get away and
14 I didn't. Maybe there's even a security
15 camera so that you can see the teller
16 going, "Please don't hurt me," and I
17 shoot him or her anyway. And my question
18 is then if we get to the second phase, in
19 a case like that, is the death penalty
20 going to be -- is it your preferred
21 option? Am I going to have to talk you
22 out of giving me the death penalty? I

1 need to know how you think about that in
2 a situation like that?

3 A. You say would it be my preferred option? It
4 probably would come up. But then you
5 have these other options, also.

6 Q. And that is really what I'm trying to find
7 out. Even though you think that is a
8 senseless killing, at the second phase,
9 you know from your reading, that there
10 would in essence be four options you
11 would have if there were a death penalty
12 case. You could give me the death
13 penalty, life without parole, life with
14 30 and life with 25. What I need to know
15 from you is, given those facts that I
16 told you, that senseless killing, are
17 those penalties that I just mentioned
18 going to start out equally in your mind
19 or because of how you feel about the
20 death penalty as related to senseless
21 killings, are you going to say, "You know
22 what? I found this guy guilty. I found

1 this to be a senseless killing, and he's
2 going to get the death penalty unless
3 somebody talks me into something else"?

4 A. I think it would be equal. It would be
5 balanced out.

6 Q. Because even with the senseless killing like
7 the one I just talked to you about, you
8 understand that the second phase, the
9 State would still have to convince you
10 beyond a reasonable doubt that I should
11 get the death penalty, right?

12 A. Yes.

13 Q. There may be things that you would hear at
14 that second phase, maybe I needed the
15 money because my son had some horrible
16 disease, and maybe I myself suffered from
17 not really a mental illness that would
18 make me not guilty by reason of insanity,
19 but maybe it affected my judgment and my
20 perception, and I didn't want my son to
21 suffer from the same thing, so I was
22 desperate. And those would be things to

1 weigh against that senseless killing. Do
2 you see how that would work?

3 A. Yes.

4 Q. Now, I don't know what to take from your
5 reaction there. Are you saying that
6 those would be things to consider, but
7 too bad, you are still getting the death
8 penalty?

9 A. No.

10 Q. I'm not asking how you would vote on those
11 facts that I have just given you, because
12 that is unfair because you haven't heard
13 everything. What I'm trying to find out
14 from you is, would you be willing to
15 listen to that type of evidence and would
16 you go into that second phase with all of
17 those sentencing options sort of equal in
18 your mind?

19 A. Yes.

20 Q. And if I presented that type of evidence that
21 I just told you, the State would come
22 back with their reasons for why I should

1 get the death penalty and they would
2 still have to persuade you by proof
3 beyond a reasonable doubt, that the death
4 penalty would be appropriate for me.
5 Would you hold them to that burden?

6 A. Yes.

7 Q. Are you saying then that for senseless
8 murders, for murders, and that 7-11 clerk
9 by the way is clearly an innocent person,
10 we can agree on that, correct?

11 A. Yes.

12 Q. We can agree on two things, that is, senseless
13 killing and it is an innocent person,
14 correct?

15 A. Yes.

16 Q. Are you saying that the death penalty, the
17 consideration of the death penalty should
18 be reserved for those types of murders?
19 What I'm trying to find out is, do you
20 think that the person should always get
21 the death penalty for those types of
22 murders or those are just the types of

1 murders for which they ought to at least
2 be considered for the death penalty?

3 A. I would say be considered, not always.

4 Q. And I think that ties into what you said about
5 we have a death penalty because it is
6 sort of a misapplication of an eye for an
7 eye and a tooth for a tooth; am I reading
8 you correctly about that?

9 A. Yes.

10 Q. So, you are saying that maybe sometimes an eye
11 for an eye is appropriate, depending on
12 the circumstances. If you take a life,
13 you give a life, but sometimes maybe not;
14 is that what you are saying?

15 A. Yes.

16 Q. Let me ask you sort of two opposite versions
17 of the same question. What in your mind
18 are the strongest arguments for best
19 reasons for having a death penalty?

20 A. For having it?

21 Q. For having the death penalty. Not to
22 interrupt you, you think that for some

1 crimes, the death penalty is a good idea
2 or is appropriate?

3 A. Yes. It is appropriate.

4 Q. Why do you think that? Don't get me wrong,
5 I'm not challenging your view on that,
6 I'm interested in the thinking that goes
7 behind that. Do you think it is a
8 retribution thing, that is to, somebody
9 took a life they should give their life?
10 Do you think it is more of a vengeance
11 thing? You mentioned like if your son is
12 18 -- my son just turned 18, too. God
13 forbid we wouldn't want anybody to do
14 anything horrible to them and I'm sure
15 that if somebody did, the natural human
16 reaction first is, you want that person.
17 Is that any part of the equation for you,
18 that is, sort of a private retribution as
19 opposed to a public justice sort of thing
20 or is it not?

21 A. I think it is -- it seems like you are saying
22 why shouldn't we have it, have the death

1 penalty?

2 Q. I'm asking your own opinions about that. I'm
3 not asking the law's version or anything,
4 your own opinions of why we should have
5 the death penalty for some offenses?

6 A. Because some offenses deserve it.

7 Q. How about let's take the other side of that
8 question. Do you think that there are
9 some arguments for why we should have
10 life imprisonment for some offenses?

11 A. Yes.

12 Q. What do you think about that?

13 A. To have life over some of the things that goes
14 on. I don't think death is always the
15 answer to every murder or every senseless
16 murder, but I think life could be.

17 Q. How about if it is a planned murder? The
18 reason I ask about that obviously is
19 because you mention when I talked about
20 the 7-11 that I had the chance to walk
21 away, and obviously, with a planned
22 murder, you have a chance to walk away.

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1 Do you think that everybody who commits a
2 planned murder should automatically get
3 the death penalty?

4 A. No.

5 Q. And what about a crime of passion? I think
6 Mr. Bailey maybe mentioned a crime of
7 passion to you. I think he mentioned --
8 I can't remember now, the woman walks in
9 and catches her husband. A crime of
10 passion thing, do you think those people
11 should always get the death penalty?

12 A. No. Because I think sometimes you might flip.

13 Q. And that flipping sort of takes out of the
14 equation being able to avoid it as with
15 my 7-11 case?

16 A. Yes.

17 Q. Have you heard the phrase before taking the
18 Fifth?

19 A. Where you don't say anything?

20 Q. You hear it on T.V. or in the movies and
21 everybody thinks, "Don't say anything,
22 don't get yourself in trouble." It

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1 actually comes from the Constitution's
2 Fifth Amendment, and it does say that you
3 don't have to say anything to incriminate
4 yourself. The logical way that works in
5 a trial like this is it means that a
6 person, a citizen who is charged with a
7 crime has a presumption of innocence. If
8 the Government says, I think Mr. Bailey
9 even said this to you, that if the
10 Government charges them with something,
11 they have to put up or shut up. It is
12 different from other countries where may
13 be you have to prove yourself not guilty.
14 In America, if you are charged with a
15 crime, as citizen, you don't have to do
16 anything. You can just show up at the
17 trial, sit there if you want to literally
18 or figuratively and fold your arms. And
19 if the Government is able to fill up that
20 box we talked about earlier, then they
21 have proved their case and the Jury finds
22 you guilty, but, you don't take anything

1 out of the box, and you don't pour
2 anything into the box yourself as the
3 person charged with the crime. So, if
4 the Government doesn't fill up the box,
5 then this in essence lost the case. It
6 is not the Defendant wins, it is a
7 question of whether the Government meets
8 its burden of proof or not. Are you okay
9 with that?

10 A. Yes.

11 Q. Any problem presuming Donna Robert is innocent
12 as we sit here now?

13 A. No.

14 Q. You have a son who is about my son's age. You
15 and I are about the same age and we have
16 children about the same age is a better
17 way of saying it. If, I don't know if
18 your son has graduated or not yet. Mine
19 is a Senior in high school. If the
20 principal calls and says, "Hey, John, you
21 want to explain to me why Mike had a
22 loaded nine millimeter Smith and Wesson

1 in his locker?" I'm going to get this
2 look of astonishment. He might have a
3 picture of a girl pasted on his locker or
4 a picture of some race car or revved up
5 pickup truck, but not Mike. He's not
6 going to have a Smith and Wesson, and for
7 him to prove Mike guilty of having that
8 crime, I'm not going to take the
9 principal's word for it that Mike had a
10 gun. I'm going to want some proof and I
11 am assuming the same thing happened with
12 your son, you would also want some proof,
13 correct?

14 A. Yes.

15 Q. And pretty doggoned proof that you are going
16 to test and not take it at face value,
17 correct?

18 A. That is true.

19 Q. That is because you have a presumption of
20 innocence that your son as I do, just
21 didn't do that. Any problem going into
22 this case with that same sort of

1 presumption as far as Donna, and testing
2 the evidence the same way you and I just
3 talked about?

4 A. No problem.

5 Q. Because of that presumption of innocence and
6 because the burden of proof is on the
7 Government, and because Donna doesn't
8 have to do anything, one of the things
9 that may happen in this case, I'm not
10 saying it will, it just might, is that
11 she might not testify. You might not
12 hear what she has to say. That sort of
13 runs contra to our natural human
14 inclination that we want to hear both
15 sides of the case, would you agree?

16 A. Yes.

17 Q. But do you see that because of the way that
18 works with the Government either filling
19 up the box or not filling up the box, she
20 has an absolute right to just say, "I
21 don't think they filled up the box, I'm
22 not doing anything." Are you going to

1 hold that against her if she does that?

2 A. No.

3 Q. Now, how about the other side of that? Let's
4 say that she testifies, she's a witness,
5 like any other witness in this case,
6 would you agree with that?

7 A. Yes.

8 Q. Whether you decide whether or not to believe
9 her, it is certainly fair to take into
10 account, well, she's the Defendant, she
11 has a lot to lose in this case and that
12 is something that it would be fair to
13 take into consideration in deciding
14 whether you believe her or not, correct?

15 A. Yes.

16 Q. But, you don't just reject her testimony
17 because she's the Defendant, would you
18 agree with that?

19 A. Yes.

20 Q. The Government in the first phase of the case,
21 is like any other trial, has to prove its
22 case beyond a reasonable doubt. When you

1 have made important decisions in your
2 life, whether you do it on a piece of
3 paper or sort of in your mind's eye,
4 don't you kind of make a list of the pros
5 and the cons?

6 A. Yes.

7 Q. And then you have to resolve all of those cons
8 before you decide that decision is the
9 right one for you, correct?

10 A. Yes.

11 Q. It is kind of the same thing here. In your
12 mind's eye or on a piece of paper back in
13 the Jury room, you sort of make a check
14 list on one side, are all of the reasons
15 why the Prosecutors are going to say,
16 "You should find Donna Roberts guilty."
17 On the other side are all of the reasons
18 why either Mr. Ingram and I say that you
19 should have a reasonable doubt, maybe it
20 is something you come up on your own as
21 you listen to the evidence. With that
22 sort of mind set that we just talked

1 about, about my son and the gun or it may
2 be doubts that the other jurors have come
3 up with as you guys have talked about the
4 case when you are deliberating; all of
5 that make sense to you?

6 A. Yes.

7 Q. As we said before, when they fill up that box,
8 they don't have to prove that case beyond
9 the shadow of a doubt or beyond imaginary
10 or possible doubt, but they do have to
11 prove it beyond any doubt based on reason
12 and common sense. So, if when you talk
13 to the other jurors about the doubts you
14 have on that side of the check list, if
15 you have one or more than one that you
16 talk about and you think about it, and
17 you say, "Sorry, there's no other way for
18 me to account for this, other than this
19 is a doubt I have about the Government's
20 evidence," and it's a doubt based on
21 reason and common sense, it is not
22 foolish, it is not silly, it is not

1 imaginary, it's a real legitimate doubt
2 based on reason and common sense. You
3 see in that case then, the Government has
4 not proved its case beyond a reasonable
5 doubt. You okay with that?

6 A. Yes.

7 Q. Any problem holding the Government to that
8 type of burden?

9 A. No.

10 Q. You think that is a fair way to do things by
11 the way, this presumption of innocence
12 and the burden of proof beyond a
13 reasonable doubt?

14 A. Yes.

15 Q. That same type of burden applies to the second
16 phase, if in fact we get to a second
17 phase, and that is the Government in
18 essence is going to give you reasons why
19 you should consider imposing the death
20 penalty. We call them aggravating
21 circumstances. And you will hear from
22 the Defendant if you get to that phase,

1 reasons why you should not impose the
2 death penalty called mitigating factors
3 or mitigation evidence. You have to
4 weigh those. And as Mr. Bailey correctly
5 said, nobody can tell you what weight to
6 apply to that evidence. You have to
7 decide that for yourself as a juror. Are
8 you comfortable taking on that
9 responsibility?

10 A. Yes.

11 Q. Only if you find that the reasons to impose
12 the death penalty outweigh the reasons
13 not to, by proof beyond a reasonable
14 doubt, and if you find again by proof
15 beyond a reasonable doubt that the death
16 penalty is appropriate, then and only
17 then, do you vote for death. Do you
18 understand that?

19 A. Yes.

20 Q. And you are comfortable again holding the
21 Government to that type of heavy burden
22 in the second phase?

1 A. Yes.

2 Q. Is there anything that has come up since you
3 and I have been talking that you either
4 have questions about how the process
5 works or concerns or reasons why you
6 couldn't serve as a juror?

7 A. No.

8 Q. Would you like to be a juror in this case?

9 A. Yes.

10 MR. JUHASZ: Thank you.

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND
12 OUT OF HEARING)

13 THE COURT: Ma'am, you are going to
14 be in the pool from which this Jury will be
15 selected. You are going to call that number after
16 4:30 this Friday for further instructions. I would
17 again remind you not to read anything or have
18 any discussion or watch anything on T.V. Thank you
19 for your time.

20 For the record, both Defense and the
21 Prosecution have passed for cause on this last
22 juror. Let's take a ten minute recess.

1 (Court in recess at 3:10 p.m.)

2 (Resumed in Open Court at 3:30 p.m.)

3 (Juror No. 47, Walter Dawson, entered the Courtroom.)

4 THE COURT: You read that handout
5 that was given to you?

6 MR. DAWSON: Yes.

7 THE COURT: The questions that you
8 will be asked this afternoon are along two lines,
9 and that is whether or not you have read anything
10 in the papers or watched something on T.V. to the
11 point where you have your mind made up on this
12 case. Both sides have a right to have jurors who
13 don't have any preconceived ideas that they are
14 unable to set aside.

15 Any case of this nature is going to
16 appear in the papers and most people, you have
17 heard me say before, that appear on Juries, are
18 usually the type that keep informed of what is
19 going on. So it is not unusual to have many of the
20 people that are familiar with having read something
21 out of a newspaper. In my experience, most people
22 don't seem to retain much of it, but sometimes they

1 do, if they take a particular interest in a
2 particular case. You may be totally saturated with
3 what the news media has portrayed, so they will ask
4 you about where you stand on that.

5 As you know, Miss Roberts is charged with
6 aggravated murder with specifications. The person
7 who does murder in Ohio is not necessarily eligible
8 for the death penalty. It is only under certain
9 circumstances.

10 We do not follow an eye for an eye
11 because some murders do not qualify for the Jury
12 even being asked the question of the death penalty.
13 These particular charges, however, are in that
14 category. We all have our opinion on the death
15 penalty, that covers the whole spectrum of
16 possibilities. There are those who feel an eye for
17 an eye, tooth for a tooth, you kill somebody, you
18 forfeit your life. That is not the law of Ohio.

19 There are other people who could under no
20 circumstances feel like they could make that
21 decision. There's nothing wrong with either of
22 those opinions. We're all entitled to our own

1 opinion. Whatever your opinion is, is fine. We'll
2 all respect your opinion.

3 What we're looking for is 12 people who
4 can sit and start out anew on this case. Because
5 if both sides are to have a fair trial, it has to
6 be decided on what evidence is presented in this
7 Courtroom. Somebody comes in and is on the Jury
8 and they read something in the newspaper and
9 evidence doesn't square with that, if they went
10 with what the newspaper said, somebody is not going
11 to get a fair trial. And I imagine everybody on
12 this Jury, whoever it is, will have some sort of
13 opinion on the death penalty. And that is fine.
14 But each of them will have to assure these folks
15 that they are able to follow the law that is given
16 to them, so that everybody is on the same page. We
17 may have one person that says, "I really don't like
18 the death penalty, I'm not going to go that way."
19 Or somebody says, "I think anybody that commits a
20 murder should be put to death." And somebody isn't
21 going to get a fair trial, either the State or the
22 Defendant. So you understand what we're looking

1 for, right?

2 MR. DAWSON: Yes.

3 THE COURT: Fair enough.

4 EXAMINATION BY MR. BECKER OF MR. DAWSON:

5 Q. Good afternoon, Mr. Dawson. My name is Chris
6 Becker. I work for the County
7 Prosecutor's Office and this is
8 Mr. Bailey. He's what we call the lead
9 counsel and I'll assist him in this
10 trial. You see Mr. Ingram and Mr. Juhasz
11 over here and their client, Donna
12 Roberts.

13 This is really the only opportunity
14 we get to speak to you as a juror in this
15 case, because once it starts, we can't
16 turn to you and you can't ask us, "Hey,
17 what did that witness say," or "I got to
18 ask you something about what they said."
19 And in fact, if we see you out in the
20 hall or if we see you may be at lunch
21 time, we won't even be able to speak to
22 you and it is not that we're rude and we

1 don't like you or don't want to speak to
2 you, we can't speak to you and then have
3 Mr. Juhasz or Mr. Ingram come in and say,
4 "Mr. Becker is talking to these jurors, I
5 don't know what he's telling them." Once
6 we get by this phase here, we can't talk
7 to you again, so what may seem like
8 prying to you in trying to find out more
9 about you is really what we have to do
10 right now. We have to find out as much
11 as we can about you in just a little bit
12 of time here this afternoon to determine
13 whether we think you will be a good juror
14 in this particular case. That doesn't
15 mean somewhere down the road we might not
16 cross paths again in two years or six
17 months or ten years, but you may be a
18 good juror in another case.

19 So, with that in mind, I hope you
20 don't have too much of a problem
21 answering the questions that both sides
22 are going to ask of you. And as we ask

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1 these questions of you, feel free to ask
2 me questions because if I can answer
3 them, I'll be happy to answer them,
4 because this is the only time in this
5 proceeding that we're going to get to
6 speak directly to you.

7 So, one of the first things I'm
8 going to start out right off the bat. I
9 don't know if you didn't have time to
10 finish the questionnaire or not, as the
11 Court said, two of the main topics that
12 we need to speak to you about, relate to
13 the death penalty, and I am looking at
14 your questionnaire and it is just not
15 filled out to that point. Can you tell
16 us --

17 A. Where is that? Show it to me, please.

18 Q. It is on the last couple of pages there.

19 A. I didn't see it.

20 Q. We're not prying, and let me back up a little
21 bit. We're being presumptuous here,
22 because this case is really going to have

1 two components, two parts to it. The
2 first part is going to be whether or not
3 the State, us, can prove Donna Roberts
4 guilty by proof beyond a reasonable
5 doubt. We may not be able to do that and
6 you and your other fellow jurors may say,
7 "Hey, they didn't prove the case, she's
8 not guilty," and everybody goes home.
9 We'll go back to our offices, but you
10 will get to go home. But like I said to
11 you we may not, we're definitely not
12 going to be able to speak to you again
13 after today, at least individually like
14 this, and if we get to a point where you
15 are picked for this Jury and you do find
16 her guilty, we can't now come back and
17 say, okay 12 jurors, how are we going to
18 get to the part where we do impose the
19 death penalty if the State proves this
20 case beyond a reasonable doubt? We can't
21 have someone saying, "Hey, no one told me
22 about that. I can't do that. I have a

1 moral belief or religious belief. I
2 can't impose the death penalty." I'll
3 tell you, we have had people do that
4 already here today. That is fine, you
5 are entitled to your opinions and there's
6 no right answer here. You are not going
7 to give us something and say everybody is
8 entitled to their opinions. You may have
9 opinions on the war with Iraq or abortion
10 or the death penalty or all of that. The
11 only one that really matters right now is
12 on the death penalty, so I'm going to ask
13 you, do you have an opinion about the
14 death penalty?

15 A. Yes. It won't bother me a bit.

16 Q. And that is fair enough. So I guess what you
17 are telling me is that you could serve as
18 a juror in a case where the death penalty
19 would be an option for you?

20 A. Yes.

21 Q. Now, the way the law works in Ohio and pretty
22 much our country, we're being

1 presumptuous that we're going to get to
2 that point in the trial. Let's assume we
3 go through the first part of this trial
4 and you find Donna Roberts guilty by
5 proof beyond a reasonable doubt of some
6 crimes and some specifications, that
7 would make her eligible for the death
8 penalty. Now we're going to get to the
9 second phase, and you are going to have
10 four options for which to give her a
11 penalty. Death would be one of them.
12 Life with no parole would be another,
13 life with no parole after 30 years, and
14 life with no parole after 25 years.
15 Those would all be options for you.

16 Now, let's assume we're in this case
17 and we go through the first phase, and it
18 is proven by the State beyond a
19 reasonable doubt that she was involved in
20 a homicide. She aided and abetted
21 another person. And you found that she
22 committed these specifications, that she

1 assisted or aided and abetted another in
2 killing Robert Fingerhut. And I'm going
3 to try to be brief here, but there's sort
4 of two theories on the case; one is that
5 she did it with prior calculation and
6 design during the commission of a robbery
7 and a burglary, but let's just assume
8 that we get those specifications, she's
9 proven guilty, that she did aid and abet
10 in this homicide. Do you think that
11 automatically means you have to impose
12 the death penalty?

13 A. I kind of think so.

14 Q. Let's back up here a minute. If I were to
15 tell you that the law does not require
16 that, are you going to be able to listen
17 to this second phase testimony and say,
18 "You know, the State proved that she was
19 involved in planning this murder, and she
20 aided and abetted another, and it
21 happened during the course of," say "an
22 aggravated burglary or aggravated

1 robbery," or maybe both. But now we're
2 in the second phase and the Court will
3 instruct you. "I know what the Court is
4 going to tell me, but you know what, my
5 position is if you kill someone, you
6 should get the death penalty." Is that
7 what your mind set is?

8 A. Yes, Sir.

9 Q. Do you feel that mind set is so strong or so
10 prevalent that you could not follow the
11 Court's instructions?

12 A. Who could say?

13 Q. The only one that can say is you. You are the
14 one that we have got to ask.

15 A. You would have to prove it to me.

16 Q. We would have to prove what to you?

17 A. That --

18 Q. That she deserved not to get the death
19 penalty?

20 A. Yes.

21 Q. You wouldn't come in in the second phase
22 assuming you found her guilty of a

1 premeditated murder, even if the Judge
2 told you that all of those options are
3 equal to you, you could equally choose
4 any one of those four options?

5 A. Yes, I could do that.

6 Q. You could do that?

7 A. Sure.

8 Q. You are not going to let this mind set, that
9 the death penalty has to be a penalty for
10 a homicide, a pre-planned homicide to the
11 extent that it will interfere with you?

12 A. No.

13 Q. You would be fair and open to some other
14 things? I'm going to try and explain
15 this, maybe, at a -- just a common sense
16 level. When we get, if and when we get
17 to that second phase, the State, we still
18 have to prove that there's some
19 aggravating circumstances. We have to
20 prove that some bad things happened, and
21 we have to prove that she's responsible
22 for these bad things, these aggravating

1 circumstances.

2 Now, there's sort of two hurdles we
3 have to get over. First, we have to
4 prove to you enough that there's proof
5 beyond a reasonable doubt that she
6 deserves the death penalty. They may not
7 present any evidence. You may say,
8 "Well, there's just not enough evidence
9 for me to sign a verdict calling for the
10 death penalty," and you may find one of
11 the others. So, let's assume we're in
12 this second phase and she's been
13 convicted of aggravated murder. Prior
14 calculation and design and she aided and
15 abetted somebody. There's no allegation
16 in this case that she's even the shooter
17 in this case, and we're not even going
18 to present you evidence that she was the
19 shooter. Let's assume that she conspired
20 with another individual to kill Robert
21 Fingerhut, who is the victim in this
22 case. And now we're in the second phase,

1 and we show you some evidence that we
2 feel shows that she committed the offense
3 by proof beyond a reasonable doubt, and
4 that these aggravating circumstances, or
5 these bad things, warrant her to get the
6 death penalty. She doesn't have to
7 present you anything because we may not
8 have proven the aggravating
9 circumstances, the bad things, outweigh
10 the mitigating circumstances. Now I
11 don't think that is going to happen, but
12 that could happen. We have to get over
13 that first hurdle of proving that some
14 aggravating circumstances even happened
15 in that second phase.

16 So, let's assume we're in the second
17 phase and we show that those aggravating
18 circumstances, or those bad things, we
19 don't prove them by proof beyond a
20 reasonable doubt. You would agree then,
21 that you couldn't impose the death
22 penalty if that is what the Judge

1 instructed you?

2 A. You can't prove it, I can't do it.

3 Q. Even though you have the mind set that the
4 death penalty is a good thing?

5 A. Like the Judge said, I am from the old school,
6 an eye for an eye and tooth for a tooth,
7 that don't go in Ohio.

8 Q. You would follow the law?

9 A. Got to.

10 Q. Even though you are an old school kind of guy?

11 A. Yes.

12 Q. So you believe you can separate out your
13 personal opinion of what the penalty
14 should be for this kind of case and
15 follow the law as the Court were to
16 instruct you?

17 A. I think I could.

18 Q. And it is not good enough that you think you
19 could, you have to be able to do it. I
20 know we're getting presumptuous, we're
21 trying to predict your future behavior,
22 but it is only fair to her.

1 Let's assume we prove that first
2 part, we get to that first part. She's
3 guilty, you say proof beyond a reasonable
4 doubt, you sign a verdict form with your
5 fellow jurors that said, "Yes, she's
6 guilty, yes, she's committed these," what
7 we find that she's guilty of these things
8 that make her death penalty eligible.
9 Now you will get to the death penalty
10 phase, the second phase for this
11 mitigation phase, and the part where you
12 are going to determine whether or not
13 that is an appropriate penalty. And we
14 don't do much of anything. Mr. Bailey
15 and I sit over here, we kind of twiddle
16 our thumbs and say, "This is a real bad
17 thing, find her guilty and give her the
18 death penalty." And they don't present
19 anything, they don't have to. And you
20 say, "Well, you know what, I am so much
21 in favor of the death penalty, I know
22 Mr. Bailey and Mr. Becker, they didn't do

1 a very good job on the second phase, but
2 I don't care, I'm going to sign the death
3 penalty." We have to be certain that you
4 wouldn't do that. Because the Court is
5 going to tell you unless we prove it,
6 that these aggravating circumstances, or
7 these bad things outweigh any mitigating
8 factors she has, you can't impose the
9 death penalty. And you feel you can do
10 that?

11 A. I think so.

12 Q. Now, there's a second way to sort of approach
13 this. Let's assume we get to the second
14 phase and there's some aggravating
15 circumstances, and Mr. Bailey and I do a
16 good job, which I hope we will, and we
17 present to you some aggravating
18 circumstances by proof beyond a
19 reasonable doubt, and you said -- now,
20 they may present to you some mitigating
21 factors, some good things. And that may
22 balance the scale and we may not be able

1 to prove it. And I guess the best way to
2 illustrate this is to maybe give you some
3 examples. If I am a bad guy and I go
4 down here to the convenient store, the
5 Dairy Mart up on Elm Road and I go in
6 there and I demand that I got a gun and I
7 go and say, "Clerk, give me all the
8 money." And he gives me all the money
9 and I shoot and kill him. I have
10 committed an offense that will make me
11 death penalty eligible. I have committed
12 that offense. But now, let's say in the
13 mitigation phase, you find me guilty and
14 now let's say in the mitigation phase we
15 get there, and the evidence is that I
16 have got six kids, one of them has got
17 leukemia. My wife just left me for
18 another man. I am feeding and taking
19 care of all of these kids. I have never
20 done any crime before. In fact, I just
21 bought the gun that day and I was so
22 desperate to get the money. You would be

1 able to weigh that against the fact that

2 I shot and killed the clerk, right?

3 A. Yes, I could weigh it.

4 Q. Would you say, "Well, even if all of these

5 terrible things this Defendant has been

6 through in his life and all of these

7 hardships that the Defendant has been

8 through," and let's also say I

9 volunteered at the hospital, at Trumbull.

10 I help burn kids and I took kids to

11 Disney World and take them to Sea World,

12 and have done a lot of positive things

13 for the community. But I have just run

14 into a bad stretch. I didn't know what

15 to do. You could weigh that, right?

16 A. Yes, I could weigh that.

17 Q. And depending upon the circumstances, you may

18 go all the way down and just recommend

19 life with no parole until after 25 years,

20 correct?

21 A. Yes.

22 Q. And I understand we're talking hypotheticals

1 here, but you wouldn't say, "Hey, that
2 guy killed somebody." I don't care if
3 he's the second coming of whomever,
4 Mother Theresa's son, he deserves the
5 death penalty because he killed someone.
6 That's not your mind set?

7 A. No, you can't do that.

8 Q. Now, the other thing I want to ask you about
9 is, and I did note on your questionnaire
10 that you indicated that you did hear
11 about this case?

12 A. Yes.

13 Q. When did you hear about it? When it first
14 happened?

15 A. Yes, on T.V. and in the paper.

16 Q. And what do you remember about it?

17 A. I just remember what the paper says mostly.

18 Q. And did you see it on television as well?

19 A. Yes.

20 Q. And I think you even pointed out in your
21 questionnaire that obviously sometimes
22 the newspaper, they don't always get it

1 right?

2 A. Right.

3 Q. And the same for television?

4 A. Right.

5 Q. You understand that when you read an article
6 in the newspaper about a case like this,
7 or really any case or see something on
8 television, they have only got so much
9 print space and so much time to give to
10 any story. This case is going to go on
11 for a number of weeks. We're going to be
12 here picking Juries and there's no
13 television here, there's no newspaper
14 reporter, nobody is covering it, but you
15 might see an article today. So many
16 jurors were picked for a capital case or
17 so many jurors were excused. They may
18 have just gone down and asked the bailiff
19 or checked with the clerk's office. They
20 weren't even here. So, you understand
21 that what you may have read or seen may
22 not be true?

1 A. Yes.

2 Q. You obviously seem like you have had some
3 experience with that or realize that?

4 A. With our newspaper, it is common.

5 Q. Now the next question I'm going to ask you is,
6 having read or seen something about this
7 case either on television or in the
8 newspaper, you don't come in here with a
9 mind set saying, "Hey, you know what, I
10 read this article in the newspaper. I
11 saw this on channel 27, and you know
12 what, she's guilty as she sits here,
13 because I saw it on T.V." Are you of
14 that mind set?

15 A. No, Sir.

16 Q. And do you feel that you have formed an
17 opinion about this case based upon
18 anything you have read or seen on
19 television?

20 A. I did, yes.

21 Q. Do you feel you can set aside your opinion
22 based upon what you have seen and

1 determine whether she's guilty or
2 innocent only by what you hear in this
3 Courtroom?

4 A. Going to have to.

5 Q. That is going to be hard for you?

6 A. It will be hard, but I can do it.

7 Q. You won't be sitting here, let's say you are
8 one of the jurors and you are sitting
9 here in the front row and we present some
10 testimony and the testimony says, "Yes, I
11 remember reading about the police dog,"
12 this or that, or the DNA or the
13 something. I don't know what it is going
14 to be, but something is going to remind
15 you and you say, "You know what, I saw it
16 in the newspaper. They didn't cover it
17 too well here, but I remember what I read
18 in the newspaper," was A B and C. "I
19 don't care what that witness says, but
20 when I go back in that Jury room, I'm
21 going to tell these other jurors, I
22 remember the newspaper said this, that

1 and the other thing about this. I don't
2 think the witness was right, and I think
3 it is this way because I read it in the
4 newspaper." You wouldn't do that, right?

5 A. No, Sir.

6 Q. You do have an opinion about this case, you
7 believe you can set aside your opinions
8 and determine this case solely on what
9 you hear in this Courtroom and from the
10 witness chair?

11 A. Yes.

12 Q. Because we got to be certain of that, and
13 particularly Mrs. Roberts has to be
14 certain of that, as she sits over there.
15 You have heard of the presumption of
16 innocence, right?

17 A. Yes.

18 Q. You sitting here and looking at her, you are
19 not saying, "She's guilty. I know she's
20 guilty because I saw it in the newspaper.
21 I saw it on television"?

22 A. No.

1 Q. You may have an opinion, because you have seen
2 some things but you can set that aside
3 and determine this case solely from what
4 you hear in this Courtroom?

5 A. Yes, Sir.

6 Q. I'm going to ask you, because they may ask you
7 and I think it is an important question
8 to ask. If you were the accused, and you
9 were sitting over there, how would you
10 feel if someone had come in here and
11 said, "Yes, I formed an opinion." Would
12 you want this person on that Jury? Would
13 you want a person like you on this Jury?

14 A. Of course.

15 Q. I'm not asking you --

16 A. I know what you are saying.

17 Q. You believe you could be fair and impartial?

18 A. Yes.

19 Q. And you are an old school guy. You said that
20 and you have read the newspaper and no
21 one is faulting you for reading the
22 newspaper. Obviously you are watching

1 television, when you saw this on
2 television or when you read it in the
3 newspaper, you didn't know a year later,
4 you are going to be picked for this Jury,
5 and obviously, you are here because you
6 are a person that cares about the
7 community. You vote, and that is how we
8 pick them, is you vote so you like to
9 take an interest in the community and
10 know what is going on, and whether this
11 case was about Donna Roberts and Mr.
12 Fingerhut and the death, it may very well
13 have been about something that was going
14 on in the City of Warren with the police
15 department and maybe the police were
16 suing or the Union was suing the City
17 because of something unfair. You want to
18 know about the things in your community,
19 right?

20 A. Yes.

21 Q. Now in this particular case, like every other
22 criminal case, the Defendant is presumed

1 innocent. I assume you have heard that
2 term before?

3 A. Yes.

4 Q. And if you had to vote right now at 4:00 on
5 April 14, if you had to vote guilty or
6 not guilty in this case, what would your
7 vote have to be today?

8 A. I couldn't make a decision like that. Ain't
9 got no evidence.

10 Q. You would have to vote not guilty, right?

11 She's presumed innocent and we may never
12 get to the point where we prove her
13 guilty, right? You may hear some
14 terrible things, you may hear that
15 someone got killed. You may hear some
16 things about conversations she may have
17 had with people, but unless we prove to
18 you and in your mind that she's guilty,
19 and your fellow jurors, you can't find
20 her guilty, right?

21 A. Right.

22 Q. And every case has what we call elements and

1 it is just basically pieces of the
2 puzzle. And a lot of times people refer
3 to it as filling a jug of water or a pail
4 of water. Let's say that you got a two
5 gallon bucket, and we have to prove our
6 case by proof beyond a reasonable doubt.

7 Now, proof beyond a reasonable doubt
8 is going to mean something different to
9 every person that comes in here. Some
10 people are going to say it is 99 percent.
11 Some people are going to say it is 90
12 percent. Some may say it is 85 per cent.
13 whatever it is, it is hard to give a
14 number to it, so sometimes we use this
15 bucket of water example. I'm going to
16 tell you it is not completely full. That
17 is not reasonable doubt, that is all
18 doubt, and the Judge is going to tell
19 you, we don't have to fill that bucket up
20 completely. It doesn't have to be filled
21 to the rim. Even if you lift it up,
22 water is going to spill out. It has got

1 to be pretty close to the top. Maybe an
2 inch or two, if it is a two gallon
3 bucket. It is going to be a gallon and
4 seven-eighths, maybe a gallon and
5 three-quarters. It has got to be up
6 there near the top.

7 And on the other hand, it certainly
8 has got to be much more than half and it
9 has got to be getting close to the top
10 there, so let's say we're in this case
11 and we present to you and Mr. Bailey and
12 I, we do okay, but there's some things we
13 leave out, and maybe we don't prove one
14 or two of the elements, and we're just
15 not doing a good job and the evidence
16 isn't there. There's something there
17 that is missing. You have to, even if
18 you knew this case was about someone who
19 has been shot and killed or even if you
20 knew some other things about this case,
21 maybe conversations that she had with
22 other people, if we didn't meet the

1 elements of the crimes, you would have to
2 find her not guilty, right?

3 A. Yes.

4 Q. So you believe that and you would hold us to
5 the, first of all, the standard of proof
6 beyond a reasonable doubt?

7 A. Yes.

8 Q. Because we have to prove our case. Now, the
9 other thing is in this presumption of
10 innocence, you understand she doesn't
11 have to do anything. Now I certainly
12 don't expect Mr. Ingram and Mr. Juhasz to
13 sit there and not ask one question from
14 any of our witnesses, and I don't know if
15 they are going to present any witnesses
16 in their defense and I don't know if Miss
17 Roberts is going to take the witness
18 stand. And that is really irrelevant.
19 Because she does have that presumption of
20 innocence. But theoretically, Mr. Bailey
21 and I, we could present 30 or 40
22 witnesses. We could present 300 or 400

1 Exhibits. They could sit over there and
2 do the crossword puzzle or play dice over
3 there, as long as they were quiet over
4 there. They could stand up and say, "We
5 don't have any evidence," and sit back
6 down. You wouldn't hold that against
7 her, would you, and if we didn't prove
8 our case, the State's case by proof
9 beyond a reasonable doubt? Your verdict
10 would have to be what?

11 A. Not guilty.

12 Q. And even, if there was a death involved, or
13 some things that you didn't like about
14 Miss Roberts, you wouldn't find her
15 guilty based upon what you have read in
16 the newspaper or things that you came in
17 here with, with the media, would you?

18 A. Right.

19 Q. Now, this case is going to involve a concept
20 of what we call complicity. It is an
21 aider and abetter. She's a helper. I'm
22 going to tell you right now as we stand

1 here, she's not the shooter. You are not
2 going to hear any evidence that she got a
3 gun and shot somebody. But you may hear
4 some evidence that she aided and abetted
5 or helped somebody do this. You
6 understand that that also could make her
7 eligible for the death penalty if we
8 prove that and some other elements and
9 the specifications that are alleged in
10 the indictment, correct?

11 A. Right.

12 Q. Do you think that changes things for you, if
13 she's not the actual shooter?

14 A. Don't change nothing.

15 Q. And on the other side, the flip side of that,
16 you would be able to impose the death
17 penalty if you felt that the State had
18 proved, even though she's not the
19 shooter, if we had proved our case beyond
20 a reasonable doubt and we got to the
21 second phase, and we proved that the
22 aggravating circumstances outweighed the

1 mitigating factors?

2 A. Yes.

3 Q. Again, I'm not trying to pry, but we would
4 like to know some things sometimes. I
5 notice that you are retired. Where are
6 you retired from?

7 A. Packard.

8 Q. What did you do there at Packard?

9 A. I did various jobs. I ended up on a semi.

10 Q. And I also notice that you are not originally
11 from Trumbull County, right?

12 A. No, Belmont County.

13 Q. Bellaire, Big Red?

14 A. Yes.

15 Q. How long have you been in Trumbull County?

16 A. Since 1957.

17 Q. You have been around a while then?

18 A. Yes.

19 Q. How long is it that you have been retired?

20 A. Since 1994.

21 Q. So, about eight or nine years?

22 A. Yes. I'm not retired. I am on total

1 disability.

2 Q. It said retired. There's also some questions
3 and I didn't see, and they are blank
4 here, but we asked you if you had any
5 problems at home maybe or any health
6 problems that would affect you sitting as
7 a juror. Is there anything that you
8 wouldn't feel comfortable sitting here
9 for maybe six, seven hours a day and
10 hearing testimony?

11 A. You don't sit straight?

12 Q. No, we take breaks. We come in and we take --
13 we may start at 9:00 and believe me, our
14 Court Reporter would kill us if we went
15 straight.

16 A. My legs would go numb. I have to move.

17 Q. And by all means, I think Judge Stuard is like
18 most of the other Courts that I have
19 practiced in front of, if you have to use
20 the restroom or if you have got to stand
21 up and stretch, let him know or say, "I
22 have got to move my leg," and sometimes

1 jurors stand up and stretch and move
2 around, but believe me, we don't want to
3 sit here for six, seven hours straight.
4 But we take breaks. We usually take a
5 morning break and always a lunch break
6 and we'll take a break in the afternoon.
7 And sometimes we take more breaks than
8 that. Things come up and we may have to
9 take breaks and send the Jury away. Is
10 there anything that you feel that you
11 couldn't serve as a juror, physically or
12 any pressing issue at home?

13 A. No.

14 Q. Just remember, now I noticed on your
15 questionnaire that you really didn't know
16 anybody from law enforcement?

17 A. No.

18 Q. Don't know any of the Sheriff's deputies?

19 A. The only sheriff I bowl with him is Bob Davis.

20 Q. Okay. One of the things you have to do in
21 this case is you have to sort of weigh
22 and test the credibility of witnesses.

1 Some of the witnesses, and I usually use
2 this example because it is real easy to
3 sort of see what I am talking about.
4 Let's say the case isn't about a
5 homicide. It is not about a murder. But
6 let's say it is about a guy who went
7 through a traffic light, and he went
8 through the traffic light right down here
9 at Park and High Street. And let's use
10 the example of a guy is coming up, he
11 crosses Market and he's going north on
12 Park, and he blows through this
13 intersection right here on the corner of
14 High and Park. And the light is red. He
15 hits a guy that is going east on High
16 Street, T-bones him, hits him right in
17 the middle. The guy slides around and
18 gets some injuries, broken arm or bangs
19 his head against the driver's side door
20 and gets some serious injuries.

21 Now, we're in Court and we're
22 charging this guy. We have got him

1 charged with some kind of traffic offense
2 for blowing through this traffic light,
3 going through a red light. Now you would
4 expect us to obviously present some
5 witnesses, right?

6 A. Yes.

7 Q. If the witness says, "We call our first
8 witness," let's say it is our only
9 witness in this case, do you believe we
10 could prove our case with just one
11 witness?

12 A. Yes.

13 Q. And let's say the witness is Monsignor
14 Whomever from Cleveland and he happens to
15 be here. Let's say he's one of the
16 Reverends or Priest or Ministers here of
17 a local church and he says, "I walk the
18 Courthouse Square every day and this
19 happened at 12 noon, and I always walk
20 around the same block and I really pay
21 attention to the traffic lights, because
22 I have almost been hit myself sometimes.

1 And I am walking east on High Street and
2 just as I step off the curb, I see the
3 light change and I have got the green
4 light. I'm going east and the little
5 walk sign says in white letters, walk,
6 and but every time I have learned,
7 because there's some people that don't
8 pay attention, I look both ways before I
9 actually start to walk. And as I'm
10 standing there and I see the light turn
11 green and I see, walk, I look both ways
12 and I see this guy barreling like a bat
13 out of Hades coming across Market and
14 he's coming up North Park, and I step
15 back and I see him just crash into this
16 guy. We had the light, because we're
17 going east on High Street." You have no
18 problem finding, assuming we proved all
19 of the elements by proof beyond a
20 reasonable doubt, you would have no
21 problem finding the guy guilty, right?

22 A. Yes, Sir.

1 Q. Now, let's change it up a little bit, because
2 this is the thing you may have to do and
3 I am exaggerating things, but let's
4 assume that the guy at the corner wasn't
5 a man of the clergy. Let's assume it was
6 a guy that had just stumbled out of a bar
7 down here. He had been coming up from
8 Raiders, he had been drinking all night,
9 been drinking all morning. Started again
10 in the morning and now it is 12 noon and
11 he's been drinking since 6:00 A.M. He's
12 the brother of the guy that is allegedly
13 injured in this. He wears glasses, but
14 he wasn't wearing them that day and he
15 tells you that this guy who came through,
16 barreled through the thing -- let's also
17 assume the guy can't read. He doesn't
18 know if the sign says walk or don't walk
19 and he's color blind too, and he doesn't
20 know if it is green, red, pink or yellow
21 up there. You have some problems with
22 this witness now?

1 A. Yes.

2 Q. I am exaggerating for effect, but that is a
3 little bit what you are going to have to
4 do here. You are going to have to look
5 at some of the biases and interests that
6 they have. You will be able to do that,
7 right?

8 A. Yes, Sir.

9 Q. Hopefully we're not going to have any blind,
10 drunk witnesses, but you never can tell.
11 Now, one of the other things the Court is
12 going to tell you is that we don't really
13 want sympathy in this case. We want you
14 to decide this case without being
15 sympathetic. That is a silly notion and
16 we have a lot of silly notions. We want
17 you to be a voter, because you are here,
18 but we don't want you to know anything
19 about this case. We want you to come in
20 and if you have an opinion about the
21 death penalty, we don't want you to put
22 it aside. One of the other things is, it

1 is natural to be sympathetic sometimes to
2 people, right?

3 A. Sometimes, yes.

4 Q. And you may be sympathetic, I'm not sure where
5 you are going to fall and who you may
6 fall for or if you will be sympathetic.
7 You may feel sympathy for Miss Roberts,
8 because she's a woman and she's the
9 Defendant in this case charged with these
10 terrible crimes. You may feel
11 sympathetic for the victim and his
12 family, because there's going to be
13 testimony about a death. You are
14 probably going to see some photographs of
15 a dead individual. Do you believe you
16 will be able to decide this case without
17 sympathy and determining sympathy? You
18 are not going to say, "You know what, I
19 don't care, the State didn't prove all of
20 the elements, but you know what, I saw
21 pictures of this guy and he looked
22 horrible and he had these terrible

1 injuries, and you know what, she was
2 rumored to have been involved. And I
3 read some newspapers, she's got to be
4 guilty and I'm going to find her guilty."
5 You are not going to do that or are you?

6 A. No, I won't do that.

7 Q. Mr. Dawson, I guess I want to ask you and
8 leave you with one more question. And I
9 guess that question is, is there anything
10 that I haven't covered that you feel you
11 ought to tell me about, or these
12 gentlemen or the Court, about why you
13 could not serve as a juror in this case?

14 A. No, Sir.

15 Q. You feel you could serve as a juror and be
16 fair and impartial and determine this
17 case based solely upon what you hear in
18 this Courtroom?

19 A. Yes, Sir.

20 MR. BECKER: Thank you very much for
21 your time. Thank you.

22 THE COURT: Before we proceed with

1 your questioning, there's a note here I would like
2 you to read. We have to get an answer back to them
3 from one of the prospective jurors.

4 (SIDE BAR DISCUSSION, OFF THE RECORD AND
5 OUT OF HEARING)

6 EXAMINATION BY MR. INGRAM OF MR. DAWSON:

7 Q. My name is Jerry Ingram, and John Juhasz and I
8 share the responsibility of representing
9 Donna Roberts, who is on trial for her
10 life. Obviously, we feel we should take
11 every reasonable precaution in selecting
12 a fair minded juror, the same type of
13 Jury that you or I would want to decide
14 our case if we were on trial. Does that
15 sound fair enough to you?

16 A. Yes, Sir.

17 Q. This is a lot like a job interview. Except
18 when you went to Packard to be
19 interviewed, you chose to go, didn't you?

20 A. Yes.

21 Q. When you go for a job interview, you get to
22 choose. In this situation, the Jury

1 wheel chose you, and we asked you by way
2 of a summons to come in. We're
3 interviewing you today for one of the
4 most important jobs there is. The job of
5 determining the truth and deciding the
6 fate of another human being. How do you
7 feel about being asked to assume that
8 responsibility?

9 A. It is a little hair raising, you know. You
10 ain't used to it.

11 Q. How do you feel, what is your personal opinion
12 about the American Jury system?

13 A. The American Jury system. You don't want to
14 hear it.

15 Q. I do want to hear it. You approve of it, you
16 don't like it?

17 A. I think it is too easy most of the time.

18 Q. How so?

19 A. I am from the old school, an eye for an eye
20 and tooth for a tooth.

21 Q. We have had Juries since we fought the
22 Revolutionary War, so Juries are indeed

1 old school.

2 A. But they seem like they are getting too
3 lenient.

4 Q. You think Courts are too lenient, too?

5 A. Yes.

6 Q. What do you think we should do about that?

7 A. I don't know. I really have never studied the
8 Court that well.

9 Q. Do you have any ideas about what we can do
10 about the Juries being too lenient?

11 A. I have no idea.

12 Q. I guess I need to know. Do you approve of the
13 Jury system or do you disapprove of the
14 Jury system?

15 A. It is the best we got.

16 Q. The Jury system will only work when we can
17 find good people. Whether they are old
18 school, new school, middle school, good
19 people, to come in here give of
20 themselves, hear evidence and resolve the
21 case. Do you agree with that?

22 A. Yes, Sir.

1 Q. If you are selected to be a juror, your job
2 responsibility will be to fairly and
3 impartially determine the facts of this
4 case. Do you understand that?

5 A. Yes, Sir.

6 Q. Your job responsibility now is to openly and
7 honestly tell us, if you would have any
8 problems giving either side a fair shake
9 in this case. Do you understand that?

10 A. Yes, Sir.

11 Q. And there are no right or wrong answers here.
12 There's only honest heartfelt answers,
13 and there's only one mistake you can
14 make. And that is if in the course of
15 our conversation, you tell me what you
16 think I want to hear instead of how you
17 really feel, and I would ask you not to
18 do that. I think I know you well enough
19 after just about 45 minutes to know that
20 you are going to tell me the way it is,
21 and that is what I want you to do, and
22 will you please do that?

1 A. I will.

2 Q. And do you recall the Judge's orientation
3 instruction on Tuesday when we were down
4 at the other end of the hall?

5 A. Yes.

6 Q. And there was part -- a part in there where he
7 said that many of you may be excused.
8 And if you are excused, it is just
9 because you have given honest and
10 heartfelt answers which is what you
11 should do during this stage of the
12 process; do you recall that?

13 A. Yes, Sir.

14 Q. So I'm going to ask you some questions. They
15 are probably not going to be easy
16 questions, and if you were asking me the
17 same questions, they wouldn't get any
18 easier, they would still be hard. I
19 would have a hard time answering them,
20 too. I want you to understand that.

21 A. Okay.

22 Q. First off, what all do you remember seeing,

1 reading or hearing about this case, or
2 the case of Nate Jackson?

3 A. Well, all I remember, just that she had a
4 boyfriend, I guess you would call it, and
5 they connived to shoot her -- was it her
6 husband or live-in?

7 Q. Live-in.

8 A. Shoot her live-in for insurance money.

9 Q. She had a boyfriend. What you read and I want
10 to summarize it, is that she had a
11 boyfriend and that she and her boyfriend
12 got together and shot her live-in to get
13 the insurance money. Is that about it?

14 A. That is about the main thing.

15 Q. And as a result of what you saw, read or heard
16 and that was way back when this occurred?

17 A. Yes, Sir.

18 Q. So that was in December of 2001.

19 A. Okay.

20 Q. How long ago was that? About a year and a
21 half ago?

22 A. Yes.

1 Q. I'm bad with math, which is why I asked you to
2 help me.

3 A. So am I.

4 Q. They gave us the answer. As a result of what
5 you saw, read or heard back in December
6 of 2001, you told Mr. Becker that you
7 formed opinions about this case?

8 A. Yes, Sir.

9 Q. He didn't ask you what those opinions were,
10 and I don't believe you volunteered those
11 opinions, so I'm going to ask you. What
12 are those opinions?

13 A. She's guilty.

14 Q. And you have held that opinion that she was
15 guilty since December of 2001?

16 A. Yes.

17 Q. And when you came into the Courtroom on
18 Tuesday, did you talk to any other jurors
19 about this case?

20 A. No, Sir.

21 Q. Did you read any newspaper articles shortly
22 before you came on Tuesday?

1 A. No, not before.

2 Q. How about afterwards?

3 A. Yes, the day after.

4 Q. The day after?

5 A. Yes.

6 Q. So if you were here on Tuesday, you read the
7 newspaper article on Wednesday?

8 A. I believe so.

9 Q. And that article would have been in what
10 newspaper?

11 A. Tribune.

12 Q. Do you recall what that newspaper article
13 said?

14 A. That they were starting the Jury process,
15 picking a Jury.

16 Q. At this stage of the proceedings, she works
17 harder than the rest of us, so we have to
18 be considerate. If we hear her sigh, we
19 assume that we're responsible. That
20 newspaper article on Wednesday of last
21 week went back and rehashed the things
22 that you had previously read, seen or

1 heard, correct?

2 A. Right.

3 Q. And did it reaffirm your previous opinion that
4 she was guilty?

5 A. Didn't change it either way.

6 Q. So the opinion that you had had since December
7 of 2001 simply remained steady?

8 A. Yes.

9 Q. I have to candidly ask you a question. I need
10 to know how you are going to unwind your
11 mind. I need to know how you are going
12 to unwind your mind and let me explain
13 what I mean by that. By unwind, I don't
14 mean relax. I want to know how you
15 propose to unwind your mind so that this
16 opinion that you have held since December
17 of 2001, will no longer affect your --

18 A. You will have to do that in the Jury room.

19 Q. Who?

20 A. You and your partner.

21 Q. So we're going to have to convince you of
22 Donna's innocence to get you over this

1 opinion of guilt?

2 A. Right.

3 Q. And you are telling me that after you have
4 heard the orientation instruction,
5 correct?

6 A. Yes.

7 Q. And after you have read the preliminary
8 instructions downstairs this afternoon?

9 A. Yes, Sir.

10 Q. And after you spent a great deal of time in
11 talking with my friend and colleague,
12 Mr. Becker here about the presumption of
13 innocence?

14 A. Right.

15 Q. And you do understand and know about the
16 presumption of innocence, don't you?

17 A. Yes, Sir.

18 Q. And notwithstanding, notwithstanding what you
19 know and understanding of the presumption
20 of innocence, because of your opinions
21 since December of 2001 that Donna is
22 guilty, you will require the Defense

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1 during the course of this trial to prove
2 her innocence?

3 | A. Right.

4 Q. And that is an honest and heartfelt response,
5 correct?

6 | A. Yes, Sir.

7 Q. Some things I'm old school. In some things, I
8 am really new school. But in some things
9 I'm old school, and I can feel different
10 ways about different things. Does that
11 make sense?

12 | A. Yes, Sir.

13 Q. And some of those things I'm willing to
14 surrender. Some of those things, I am
15 willing to temporarily set aside, but
16 there are others, that dang it, I am
17 sticking to. Does that make sense?

18 | A. Yes, Sir.

19 Q. And this opinion of guilt and this requirement
20 that you have in your mind, and there's
21 nothing wrong with that. I want you to
22 understand it. This requirement that you

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1 have in your mind that the Defense has to
2 prove her innocence. That is something
3 that is going to stay with you, isn't it?

4 A. Yes, Sir.

5 Q. That is something you are not going to readily
6 surrender because it is something you
7 feel strongly about?

8 A. Yes, Sir.

9 Q. And being an old school guy, that is the way
10 it is. It is sort of a black letter
11 thing, correct?

12 A. Black and white.

13 Q. Black and white?

14 A. Yes, Sir.

15 MR. INGRAM: Your Honor, may we
16 approach Side Bar?

17 (SIDE BAR DISCUSSION, OFF THE RECORD AND
18 OUT OF HEARING)

19 THE COURT: Mr. Dawson, you have
20 done what we have asked you to do and that is to
21 state your opinion. I am releasing you from any
22 further responsibilities in this matter. We thank

1 you for your time and your participation. You have
2 answered the questions quite truthfully and that is
3 all we can ask of you. Thank you.

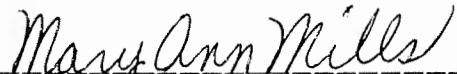
4 (Juror No. 47 excused from the Courtroom.)

5 THE COURT: The Side Bar
6 conversation was, as we have agreed from the
7 beginning of the trial, not to make these motions
8 in front of the prospective jurors. The Defense
9 has moved on the basis of the questions put for
10 challenge for cause without objection from the
11 State.

12 (Court in recess at 4:25 p.m.)
13
14
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21
22

REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.


MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

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1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO) VOLUME VI
5))
6 Plaintiff))
7) INDIVIDUAL VOIR DIRE
8 - vs -))
9))
10 DONNA M. ROBERTS))
11))
12 Defendant))

9 BE IT REMEMBERED, that on Tuesday, April 15,
10 2003, these proceedings came on to be heard before
11 one of the Judges of this Court, John M. Stuard,
12 in Courtroom No. 2, on High Street, Warren, Ohio,
13 before the case heretofore filed herein.
14
15
16
17

18 Mary Ann Mills, RPR
19 Official Court Reporter
20 Trumbull County, Ohio
21
22

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I N D E X

VOLUME VI:

(Tuesday, April 15, 2003)

Individual Voir Dire:

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1 Tuesday, April 15, 2003; In Open Court at 9:40 a.m.:

2 CONTINUING VOIR DIRE EXAMINATION:

3 (Juror No. 52, Irene Zahornek, entered the Courtroom.)

4 THE COURT: Good morning. You have
5 read the handout sheet that was given to you.

6 MS. ZAHORNEK: Yes.

7 THE COURT: The purpose of today is
8 to allow both sides to ask each of the prospective
9 jurors some individualized questions about two
10 areas in particular. This type of case always
11 generates some media interest, of course. And over
12 the past year or so there's been, there have been
13 numerous articles that appeared in the newspaper
14 and things on T.V. Now most of the people probably
15 will have some general knowledge about this case
16 from the publication that occurred. And that
17 doesn't disqualify anybody from being a juror, but
18 the concern is that both sides would hold is that
19 some of those jurors will have some pretty hard and
20 fixed and firm ideas of what they think the facts
21 are about in this case.

22 In this matter, in order to see that both

1 sides have a fair trial, has to be decided on the
2 evidence that is presented. If something they read
3 in the newspaper is used to determine the outcome
4 of this case, then that is not fair to one side or
5 the other. The questions that will be put to you
6 as to whether or not you have your mind made up
7 from what you have already read, if you have read
8 anything, there have been a couple that said they
9 have not read anything, or read very little about
10 it.

11 The other issue is what your thoughts are
12 on the death penalty. Now Miss Roberts is charged
13 with aggravated murder with specifications. Under
14 the law of Ohio, a person does not face the
15 prospect of the death penalty just for murdering
16 somebody. It is only murders done under certain
17 circumstances or certain people that are killed,
18 police officers and the Governor. And that brings
19 up the question of death penalty.

20 But in the charges that were filed
21 against Miss Roberts, there were specifications
22 attached which raises the specter of this Jury

1 possibly having to consider the death penalty.

2 Now, the State always has the burden of
3 going forward and of proving beyond a reasonable
4 doubt each and every element that is necessary to
5 prove the charges and the specifications. The
6 Defense need do nothing if they care not to,
7 because every Defendant has a right to remain
8 silent and the burden as I said is entirely upon
9 the State to prove their case.

10 Some people feel that the eye for an eye,
11 tooth for a tooth, you murder somebody and you
12 should be put to death. That is not the law of
13 Ohio. There are other people who could under no
14 circumstances feel that they could sit on a Jury
15 where that question might come up on the death
16 penalty.

17 So, if the Prosecution, after they have
18 completed their case, have failed to carry their
19 burden of proof, then this Jury would make a
20 finding of not guilty. But if the Jury find that
21 the State has done all things necessary to prove
22 their case and made a finding of guilty on the

1 aggravated murder, then the case would go into a
2 second phase.

3 Ordinarily in any other type of case
4 under Ohio law, the Jury never determines the
5 sentencing. That is up to the Judge, but because
6 of the seriousness of this type of matter, the Jury
7 is called upon to review and listen to the evidence
8 presented by the Prosecution, which we call
9 aggravating circumstances. Those are reasons why
10 the Jury should consider imposing the death
11 penalty.

12 And the Defense has an opportunity, if
13 they care to, to show mitigating factors, and those
14 would be factors or reasons why the Jury should not
15 impose the death penalty.

16 The State always has the burden of
17 proving beyond a reasonable doubt that those
18 aggravating circumstances do outweigh any
19 mitigating factors. Now again if the State carried
20 that burden of proof, this Jury may be faced with
21 the prospect of determining one of four
22 recommendations of sentencing. We use that term

1 recommendation. The Jury recommends and the Jury's
2 decision is rarely overturned by Judges. There
3 have been very few cases. It would have to be that
4 the Judge has to independently review what the Jury
5 determines, but that is not for the purpose of the
6 Judge upsetting the Jury's verdict unless he found
7 that there was some element that was missing as a
8 question of law. Do you understand?

9 MS. ZAHORNEK: Yes.

10 THE COURT: So the Jury makes the
11 decision, which the Judge has an opportunity only
12 of possibly reducing if the Jury came back with a
13 life sentence. This Court could not impose a death
14 penalty. That is only done through the decision of
15 the Jury. So, the second question that will be put
16 to you will be your thoughts on the death penalty.
17 Whatever your thoughts are is fine. You are
18 entitled to your opinion and we'll respect that.
19 But we must have 12 people, some of them will more
20 than less favor the death penalty. Some will
21 think, "I don't know if it is a good idea or not,"
22 and that is fine. We have to have 12 people that

1 are willing to assure all parties that they will
2 follow the law regardless of what your personal
3 opinion is. Does that make sense?

4 MS. ZAHORNEK: Yes.

5 THE COURT: Fine.

6 EXAMINATION BY MR. BAILEY OF MS. ZAHORNEK:

7 Q. Mrs. Zahornek, good morning. My name is Ken
8 Bailey, I am Assistant Prosecutor with
9 the Trumbull County Prosecutor's Office,
10 and as I promised in Court last week, I
11 am joined by co-counsel, Chris Becker,
12 who is also an Assistant Prosecutor. And
13 the two of us are going to be
14 representing the people of the State of
15 Ohio and Trumbull County in this
16 particular case.

17 Now, a couple of things I want to
18 bring out right up front. We're going to
19 be asking these questions regarding your
20 prior experiences and background and your
21 personal opinions, not because we're
22 snoopy and we like to pry into people's

1 background, but rather to make sure that
2 the folks that are selected to be on this
3 Jury can be fair can be fair and
4 impartial to both sides, both to the
5 Defendant and the State of Ohio.

6 It may well be that you have a
7 certain feeling about some issue in this
8 particular case that would affect your
9 ability to sit in this particular case,
10 and you would be fine for any other case
11 but maybe there's something that would
12 affect you in this particular case. And
13 that is what we wanted to find out.

14 Also, there aren't any right answers
15 or wrong answers to these questions, only
16 open and candid answers to the questions,
17 so it is important that you tell us how
18 you really feel about things. We're not
19 allowed to have any contact with you by
20 our rules until this case is over. Right
21 now we can talk to each other, but if we
22 run into each other out in the hallway or

1 in the elevator, we're not allowed to
2 have any communication with you, except
3 for good morning or good afternoon. I
4 want you to know that, so you know we're
5 not being anti-social and trying to snub
6 you or anything, it is just that we can't
7 have any communication. If you have any
8 questions, you will have to direct those
9 questions to the Judge or to the bailiff.
10 Sometimes that comes up, and people
11 wonder why they can't talk to us out in
12 the hallway, and if this case goes into
13 two phases, then you have to wait until
14 both phases are done. After that, feel
15 free to come up to us and ask us anything
16 you want.

17 Because this is the one chance we
18 get to talk to each other, and there's
19 some give and take here, feel free if you
20 have any questions about what we're
21 doing, as long as it pertains to what
22 we're doing here. Feel free to ask and

1 maybe we can answer those questions for
2 you. Now, you understand you got a
3 chance to read that handout downstairs,
4 right?

5 A. Yes.

6 Q. You know the Defendant is charged here with
7 two counts of aggravated murder. There
8 are two different theories. There's one
9 death and two separate theories, if the
10 State is allowed to pursue and we have
11 elected to pursue two different theories
12 regarding that death. And attached to
13 these charges of aggravated murder are
14 what we call specifications, or special
15 findings of fact for a Jury to consider.
16 That would make a Defendant eligible for
17 the death penalty as a possible
18 punishment. So, you are aware that this
19 case can be tried in two separate phases.
20 The first phase deals with the issue
21 of guilt or non-guilt. We have the
22 burden of proving the elements or

1 essential component parts of a crime, of
2 these crimes of aggravated murder. And
3 there are two other charges of aggravated
4 burglary and aggravated robbery, and
5 there were some firearms specifications,
6 special findings that a working gun was
7 involved in these particular crimes. And
8 if the Jury, you and the other 11 jurors
9 returned a verdict finding the Defendant
10 guilty of a crime called aggravated
11 murder, and one or more of these special
12 findings, these specifications that have
13 attached to it, one special finding is an
14 aggravating circumstance of aggravated
15 burglary, that the aggravated murder was
16 committed during the course of an
17 aggravated burglary and the Defendant
18 committed the aggravated murder with
19 prior calculation and design. And that
20 other specification is that the
21 aggravated murder was committed during an
22 aggravated robbery, as opposed to an

1 aggravated burglary. And the Defendant
2 committed the aggravated murder with
3 prior calculation and design. And these
4 terms, these will all be defined for you
5 by the Judge at the end of the case.

6 If you and the other jurors find the
7 Defendant guilty of aggravated murder and
8 one or more of these specifications,
9 these special findings, then we would go
10 on to a second phase. It is like having
11 two separate trials. You understand
12 that?

13 A. Yes.

14 Q. In the second phase, the issue is not guilt or
15 non-guilt, because you would have already
16 decided that, rather the issue would be
17 one of punishment. What is the
18 appropriate punishment for this
19 Defendant, for this crime? And then you
20 would expect to hear either the same
21 testimony or new testimony dealing with
22 different things, and in the second

1 phase, would deal with the aggravating
2 circumstances that I have mentioned,
3 these bad facts, I guess you call them,
4 that would justify a death penalty
5 verdict. And on the other hand would be
6 things that work in the Defendant's
7 favor. We call those mitigating factors.
8 That would go on to a scale for a
9 balancing test. And if you and the other
10 11 jurors find beyond a reasonable doubt
11 that the aggravating circumstances
12 outweigh these mitigating factors, then
13 you must return a verdict recommending
14 the death penalty as a punishment. You
15 understand that?

16 A. Yes.

17 Q. Now, it is only if you find that the
18 aggravating -- if you find that we
19 haven't proved beyond a reasonable doubt
20 that the aggravating circumstance
21 outweighs the mitigating factors beyond a
22 reasonable doubt, that you go on to

1 consider the three possible life
2 sentences; life in prison without any
3 parole possibility, life in prison with
4 parole eligibility after 30 full years,
5 and life in prison with parole
6 eligibility after 25 full years. Do you
7 understand that?

8 A. Yes.

9 Q. Now, I notice on your questionnaire that you
10 indicate that you don't believe in the
11 death penalty as a possible punishment?

12 A. No. That is why I wrote that on there,
13 because first is my religion, and I don't
14 know how I could actually feel knowing
15 that I have been a part of having to put
16 a person to death, but I do feel that no
17 crime should go unpunished.

18 Q. You believe in holding people accountable for
19 their actions?

20 A. Yes.

21 Q. There's nothing wrong with your personal
22 belief system. There are a lot of people

1 that feel that way. They are against the
2 death penalty as a punishment. That is
3 why we're asking these questions now. It
4 is important to know how people feel, so
5 that they can be fair to both sides. I
6 take it you would agree that you
7 understand the death penalty is not an
8 automatic punishment for somebody who is
9 found guilty of aggravated murder with a
10 specification, because you wouldn't have
11 heard anything about the Defendant or
12 mitigating factors in the first phase.
13 It would be relevant in the second phase
14 dealing with what is appropriate
15 punishment, right?

16 A. Yes.

17 Q. And for somebody to come in and say, "Well, I
18 believe in the death penalty as a
19 punishment and anybody who commits an
20 aggravated murder should be punished by
21 death and I would automatically vote for
22 the death penalty, no matter what." It

1 wouldn't be fair to the Defendant to have
2 somebody like that sit on a Jury, is that
3 right?

4 A. Right.

5 Q. By the same token, if somebody doesn't believe
6 in the death penalty as punishment and
7 says, "Well, for various reasons, for
8 religious reasons or my personal belief
9 system is such that I could never vote
10 for the death penalty, no matter what,
11 even if the State were able to prove that
12 these aggravated circumstances outweighed
13 the mitigating factors beyond a
14 reasonable doubt," and under the law, the
15 death penalty in that case would be the
16 appropriate punishment, and a person
17 would say to himself, "That may be the
18 law, but I really can't follow the law in
19 that particular case. Then it is
20 important we find out about that. Then
21 it wouldn't be fair to the people of the
22 State.

1 Now, I guess what I am really asking
2 is, is your belief against the death
3 penalty so strong that you would never be
4 able to reach a verdict in favor of the
5 death penalty?

6 A. I would say so, because I couldn't live with
7 myself knowing that if 11 say yes, and I
8 was the only one saying no, and since
9 I -- and in a sense I would say yes just
10 to go along with the 11.

11 Q. We couldn't ask you that.

12 A. If the judgment came to me and depended upon
13 my vote more or less, I don't think I
14 could do it.

15 Q. You are the only person who really knows what
16 you would do. And that is why we ask you
17 to seek into your mind and into your
18 heart to know. You know yourself better
19 than any of us know you.

20 A. I don't think that anything as far as the case
21 is concerned, that it should go
22 unpunished. No crime should go

1 unpunished.

2 Q. The issue here at this point is this issue
3 with the death penalty as a possible
4 punishment. Now, I take it, you have
5 held this view for a very long time?

6 A. Yes.

7 Q. Has it gotten stronger over the years?

8 A. Certain things, I could say I could change my
9 thoughts to yes it could be done, should
10 be done with the death penalty, but I
11 don't know if I could actually be the one
12 to say, "Yes, do it."

13 Q. You think the death penalty does have a place
14 in society?

15 A. It does have its place, but I couldn't be the
16 one to do it.

17 Q. There's nothing wrong with that. Because you
18 would agree it is important to have
19 people from all different walks of life,
20 with all different types of opinions, but
21 so long as they are able to follow the
22 law on a specific Jury?

1 A. Right.

2 Q. By your saying this belief, it is based on I
3 take it, religious beliefs?

4 A. I would say so.

5 Q. Also you are a nurse?

6 A. Right.

7 Q. Retired nurse, but a nurse, and I take it your
8 entire career was always saving lives?

9 A. Right, not to take a life.

10 Q. So that would be contrary to what you have
11 done all of your life?

12 A. Right.

13 Q. To ask you to come back with a recommendation
14 of the death penalty?

15 A. Very much so.

16 Q. And so I take it, it is so deeply ingrained
17 that you can't picture yourself ever
18 signing a verdict for the death penalty?

19 A. I would say so.

20 Q. You would say so that you could not sign a
21 verdict form?

22 A. Right.

1 Q. Under any circumstances, right?

2 A. Yes. I couldn't feel comfortable with myself
3 knowing that I had taken someone else's
4 life, when all of my life it has always
5 been to save a life. If there's no other
6 alternative and that person dies, you
7 can't do anything about that, but you
8 still feel bad that the person has left,
9 that the person has died.

10 Q. You go to mass every day? You are Roman
11 Catholic?

12 A. Right.

13 Q. And I take it the church has taken a position
14 against the death penalty?

15 A. Yes.

16 Q. You feel that would be a sin to come back with
17 a death penalty verdict if you were to be
18 asked to do that?

19 A. Well, as far as I would, I guess the church
20 teaches it is a sin to take a life, but I
21 would be more inclined to think of what I
22 feel as a person and go with my

1 conscience with myself.

2 Q. A matter of conscience. As a matter of
3 conscience, you could never sign a death
4 penalty verdict?

5 A. Right.

6 Q. Do you think, knowing that the death penalty,
7 if you came back with a verdict in the
8 first phase, let's say you sat on the
9 Jury. And you knew that if you came
10 back, you and the other jurors came back
11 with a verdict finding the Defendant
12 guilty of aggravated murder with one or
13 more specifications, it would make the
14 Defendant eligible for the death penalty
15 in the second phase. You feel your
16 opposition to the death penalty is such
17 that it would be difficult for you to
18 even decide the first phase?

19 A. Yes, I think it would be.

20 Q. It would be hard to come back with something
21 that would make her death eligible in the
22 second phase?

1 A. Right.

2 Q. You could certainly never sign the form in the
3 second phase?

4 A. Right.

5 MR. BAILEY: Thank you very much.
6 The Defense counsel will have an opportunity to ask
7 you some questions.

8 EXAMINATION BY MR. JUHASZ OF MS. ZAHORNEK:

9 Q. Mrs. Zahornek, my name is John Juhasz. I
10 introduced myself last week when all of
11 us were gathered down in Judge Logan's
12 Courtroom. This is my friend, Jerry
13 Ingram, and Jerry and I represent Donna
14 Roberts, who as you know from what you
15 have heard, is on trial for some pretty
16 serious offenses. As Judge Stuard said,
17 what we want to do is talk to you about a
18 couple of areas, and I don't want to
19 repeat or belabor what either the Judge
20 or Mr. Bailey said, but it does bear
21 repeating, I guess anyway, that we're not
22 here to change your mind about how you

1 feel. And the best answer you can give
2 us is how you honestly feel about
3 something.

4 You talked to Mr. Bailey for a
5 little while about the death penalty, and
6 if I am reading you correctly, and please
7 don't let me put words in your mouth for
8 you, this is a matter of conscience, that
9 you don't think that you could vote to
10 impose the death penalty, is that right?

11 A. Yes.

12 Q. Now, let's take a step away from the death
13 penalty for a second. You read the form
14 that the Court provided you that tells
15 you basically how these trials work; is
16 that right?

17 A. Yes.

18 Q. And we're not going to give a quiz on it, but
19 do you feel pretty comfortable that you
20 understand the difference between the two
21 phases?

22 A. Yes.

1 Q. And the first phase is in essence just like a
2 trial, like any other criminal trial,
3 where you decide whether the Defendant is
4 guilty or not. Do you understand that?

5 A. Right.

6 Q. If this were not a death penalty case, and we
7 were bringing you in here and asking you
8 about your ability to be a juror on this
9 case, I assume from the other comments
10 that you have said about no crime should
11 go unpunished, that as a matter of
12 conscience, would you not have a problem
13 finding someone who was proved guilty of
14 a crime, guilty of that offense, correct?

15 A. Right.

16 Q. You would have no problem signing your name to
17 a guilty verdict if the State could prove
18 to you beyond a reasonable doubt that
19 that person was guilty, correct?

20 A. Right.

21 Q. In reality, I guess what you would be doing is
22 you would both be following the law, the

1 instructions Judge Stuard would give you
2 in a criminal case like that, but it
3 would also be a matter of conscience for
4 you because you were doing the correct
5 thing; am I right about that?

6 A. Excluding the death penalty, yes.

7 Q. If it was just a plain old criminal trial?

8 Let's make it a robbery trial.

9 A. I would have no problem deciding that, no.

10 Q. And I'm going to say this the wrong way, but
11 only because I'm not trying to put too
12 many words in your mouth and I don't want
13 you to let me do that. If it is not
14 something of how you feel, stop me. I am
15 gathering from what I have heard you say
16 today that if it were just a plain old
17 robbery trial, somebody robbed a gas
18 station, that as the dictates of your
19 conscience serve you, the appropriate
20 thing would be to find that person guilty
21 if they were found guilty, correct?

22 A. Yes.

1 Q. And would the converse be true, that is if you
2 came in here and somebody said, "Well,
3 this is a robbery case and the guy
4 sitting over there is charged with
5 robbery, and the State has to prove to
6 you beyond a reasonable doubt that he's
7 guilty of the robbery," but they don't
8 prove it. Then as a matter of
9 conscience, would you feel duty bound to
10 find that person not guilty?

11 A. Yes.

12 Q. Because it wouldn't be appropriate to punish
13 someone when the State had not proved
14 them guilty, correct?

15 A. If the circumstances are not there to complete
16 it.

17 Q. When you consider the subject of punishment --
18 well, before we go there let's talk about
19 this for a second. When we do this, when
20 we try to pick jurors, we try to get a
21 cross section of people from all over
22 Trumbull County, and I would assume that

1 if you were on trial, you would want that
2 same type of Jury, would you not?

3 A. Yes.

4 Q. You wouldn't just want -- let's say it's a
5 robbery trial and it is a -- the charge
6 is that the person robbed the Dairy Mart.
7 It wouldn't seem to you to be fair, would
8 it, if we got 12 people in here who all
9 worked as store clerks and said, "You
10 guys decide whether this guy is guilty of
11 robbery." That wouldn't seem fair, would
12 it?

13 A. No.

14 Q. It sort of makes sense to you, doesn't it,
15 that you would want to get people from
16 all over the community with different
17 thoughts and different experiences and
18 different ideas, so they can talk about
19 the evidence in the Jury room. Does that
20 seem fair?

21 A. Right.

22 Q. I know that I am jumping around a little bit

1 and I don't mean to do that. I
2 apologize. A lot of times when we're
3 called upon to do things in the law, the
4 law asks us to set aside our own personal
5 opinions or beliefs about something.
6 Does that make sense to you?

7 A. Yes.

8 Q. For example, there may be -- well, there are
9 five lawyers in this room, the two
10 Prosecutors and me, and Mr. Ingram and
11 Judge Stuard. And I don't want to speak
12 for them, but I am willing to bet based
13 upon my experiences, that something in
14 the law that in one circumstance or
15 another, every one of us disagrees
16 with -- in other words, it is the law,
17 but we have a personal disagreement with
18 it. Does that make sense to you?

19 A. Yes.

20 Q. And even though it is the law and we disagree
21 with it, we take an oath that we have to
22 set aside our personal disagreement and

1 do what is in essence that has to be done
2 anyway. You see how that works?

3 A. Right.

4 Q. If we all come in and substitute our own
5 personal opinions, for example, it would
6 be unfair in a case like this, if Judge
7 Stuard, maybe he's personally opposed to
8 the death penalty, and the Jury comes
9 back and says, "Well, we just signed a
10 verdict for death." And instead of doing
11 the process that he talked about, about
12 reviewing it, he just goes, "Well, I
13 personally don't believe in the death
14 penalty, so I'm just going to nix this."
15 That wouldn't be fair, because he would
16 not be following the law, he would be
17 substituting his own judgment. Do you
18 agree?

19 A. Yes.

20 Q. I don't know what his opinion is. I am using
21 it as an example. You see how he would
22 have to set aside his personal opinion in

1 that case, correct?

2 A. Right.

3 Q. What we're trying to find out today is even
4 though you have these personal opinions
5 about the death penalty, are they things
6 that you can set aside, because as
7 Mr. Bailey said, it wouldn't be fair to
8 Miss Roberts if we had 12 people who just
9 said, "I want the death penalty. I like
10 the death penalty. The death penalty is
11 a good thing." That wouldn't be fair,
12 correct?

13 A. Right.

14 Q. You would want to have a cross section of
15 people, some to say, "Well, it might and
16 good thing," but others to say, "Well,
17 maybe it's not a good thing and before we
18 do it, we should think about it and be
19 careful." You agree with that?

20 A. Yes.

21 Q. And conversely, as I think Mr. Bailey said, it
22 wouldn't be fair to the Government if

1 they had 12 people here who just said,
2 "Can't do the death penalty, it just
3 doesn't seem right, I'm not going to do
4 it." That wouldn't be fair to the State,
5 right?

6 A. Right.

7 Q. All of those people that we would mix up in a
8 Jury would be called upon, if they can,
9 to set aside their personal opinions,
10 just like in the examples I have given
11 you, and say, "Well look, I may find this
12 something that I personally disagree with
13 for whatever reason, political
14 philosophy, religious or moral training,
15 my own ethical or moral background, it
16 may be something I disagree with, but I
17 have to set that aside and do my job."
18 That is the type of jurors that we're
19 looking for. You were a nurse for quite
20 some time, correct, an R.N.?

21 A. Forty-two years. Too many.

22 Q. My wife is a medical technologist and even

1 though we have been married for going on
2 25 years, I have to profess that I still
3 don't know a heck of a lot about
4 medicine, and I am convinced from hearing
5 her talk that I know even less about how
6 hospitals work. That being said, I'm
7 going to guess that there are probably
8 procedures that were set down to be
9 followed in the hospital over your course
10 of being a registered nurse that you
11 didn't agree with, am I right?

12 A. Yes.

13 Q. And you would have to sort of set aside your
14 personal disagreement and say, "This is
15 how they are telling me I have to do my
16 job, I have to do it anyway," correct?

17 A. Right.

18 Q. And you would do that, correct?

19 A. Right.

20 Q. Similarly, I'll bet, because people who are
21 called to your calling have a tremendous
22 amount of compassion, I'll bet that over

1 the years you felt a huge amount of
2 compassion for your different patients,
3 but when there was an emergency situation
4 instead standing there saying, "This guy
5 must feel terrible," you had to set this
6 aside and go in and objectively do
7 whatever it is that a nurse would do in
8 that situation, correct?

9 A. Yes.

10 Q. Now, all of those things having been said, and
11 understanding that you personally don't
12 think that you could vote for the death
13 penalty as a matter of personal
14 conscience, is it something that you
15 could set aside as in the examples that
16 we have talked about and say, "Well,
17 look, it isn't like it is my
18 responsibility that I am doing this
19 personally, I am being an objective juror
20 in the case and I am weighing the
21 evidence that has been provided to me."
22 Is that something you think that you

1 could do?

2 A. No, not when it comes to the actual death
3 penalty that still is an ingrainment that
4 I could let loose of. Even though it was
5 the thing to do with all of the evidence,
6 I still couldn't do it.

7 Q. No matter how horrible you found the offense
8 to be?

9 A. No, I would still have to say that my
10 conscience is deeper rooted in that
11 sense. If I had to know any kind of
12 little incident that came about, that
13 would revert to me that I was part of
14 this, I don't think I could do it. I
15 believe in the punishment. That is why I
16 wrote there that I can't go with the
17 death penalty, but I do believe that you
18 should be punished for whatever you have
19 done. I don't think it should be say,
20 just go ahead and a couple of months in
21 jail and a couple of months of rehab and
22 let it go at that.

1 Q. But if I am reading you, and all of these
2 situations we have talked about and
3 please again, I'm not trying to change
4 your mind, I'm just trying to find out
5 how you feel. In all of these situations
6 I have talked about where we set aside
7 our own personal beliefs and say, "You
8 know what, I don't feel good about this
9 personally, but this is my job," because
10 just like your job was a nurse for all of
11 those years and just like his job is a
12 Judge and my job is a lawyer, your job
13 for purposes of this case would be a
14 juror, who if you can, puts aside her
15 personal feelings and says, "I have to
16 objectively weigh this evidence, first on
17 guilt or innocence and if I get to that
18 phase, on death penalty or not"?

19 A. I know what you are saying as far as the
20 determination as far as each individual
21 as far as your actual job is concerned,
22 but my job was to save a life, and it

1 would be very hard for me to know that I
2 was part of taking a life.

3 Q. Although it is a different job now. You see
4 that?

5 A. Right.

6 Q. But you are telling me that even though it's a
7 different job, your own personally
8 feelings would be such, and I tell jurors
9 this from time to time, I don't mean to
10 suggest that when somebody says, "Look, I
11 can't follow the Judge's instruction,"
12 but you turn around to Judge Stuard and
13 going like this, thumbing your nose at
14 him. I don't mean that. One of the
15 reasons we ask these questions is to find
16 out if your feelings of personal
17 conscience are such that even if the
18 Judge says, "Look, this is what you have
19 to do in this case," that you are telling
20 us now, "I'm not trying to be rude to the
21 Judge or I'm not trying to violate the
22 law, I just have feelings that I can't

1 follow the law"?

2 A. Right.

3 Q. You don't see any circumstances where you
4 could regardless of the evidence, vote
5 for the imposition of capital punishment?

6 A. No, I don't believe so.

7 MR. JUHASZ: I appreciate your time
8 and your honesty. Thank you.

9 THE COURT: Any objection for cause?

10 MR. BAILEY: Yes.

11 (SIDE BAR DISCUSSION, OFF THE RECORD AND
12 OUT OF HEARING)

13 THE COURT: We thank you very much
14 for your time. You are excused from any further
15 duty in this matter. Maybe you will get called for
16 another type of Jury duty.

17 MS. ZAHORNEK: This is my first.
18 (Juror No. 52 excused from the Courtroom.)

19 THE COURT: The last juror is
20 dismissed for cause with both sides agreeing, is
21 that correct?

22 MR. JUHASZ: Correct.

1 MR. BAILEY: Yes.

2 MR. INGRAM: The record should
3 reflect the fact that the Defense has no objection
4 to Deputy Tony Leshnack attending to professional
5 obligations in the Courtroom during Jury selection.
6 Apparently, he's a prospective State's witness, and
7 it will be necessary for him to relieve Captain
8 Bacon and we have no objection.

9 THE COURT: Thank you.

10 (Juror No. 54, Brad Seelbach, entered the Courtroom.)

11 THE COURT: Good morning,
12 Mr. Seelbach.

13 MR. SEELBACH: Good morning.

14 THE COURT: You read the handout
15 that was given to you?

16 MR. SEELBACH: Yes, Sir.

17 THE COURT: You have a pretty good
18 idea of why we're here. Miss Roberts is charged
19 with two counts of aggravated murder with
20 specifications. Under the law of Ohio, just
21 because a person is found guilty of murder does not
22 mean that they face the death penalty. It is only

1 under certain circumstances that have been put in
2 the statute by the legislature, if you kill the
3 Governor or a police officer, that is reasons why
4 the Jury must consider the question of the death
5 penalty. Miss Roberts has two specifications
6 attached, which also raise that specter of the
7 possibility.

8 The State has the burden of going forward
9 and proving each and every element of the crime of
10 aggravated murder. They would have to prove the
11 attached specifications beyond a reasonable doubt
12 before the Jury could return a finding of guilty.
13 Should they fail to do that, then of course, the
14 trial would be over and the finding of not guilty
15 and that would be the end of it.

16 If the Jury returns a verdict of guilty,
17 however, it will go into a second hearing, and at
18 that second hearing, the Jury will be presented
19 with by the State, what is known as aggravating
20 circumstances. And that is reasons why the Jury
21 should consider imposing the death penalty. The
22 Defense has an opportunity to present mitigating

1 factors at that point, and those are reasons why
2 the Jury should not impose the death penalty.

3 So, if the State proves beyond a
4 reasonable doubt to that Jury that the aggravating
5 circumstances outweigh the mitigating factors, and
6 the Jury would be called upon to consider the death
7 penalty.

8 And this Jury will have one of four
9 different possible recommendations for sentencing,
10 and that is death, life without chance of parole,
11 the two lesser life imprisonment terms with
12 possibility of parole after 25 and 30 years.

13 Practically everyone has some view on the
14 death penalty. Some favor it, some are opposed to
15 it. That is natural. A person who feels that the
16 death penalty should be imposed every time someone
17 is convicted of murder should not sit on this Jury,
18 because that isn't the law of Ohio. Likewise, a
19 person who, and that person couldn't be fair to the
20 Defendant. And a person cannot be fair to the
21 State who under no circumstances could visualize
22 themselves imposing the death penalty.

1 You have people with both persuasions,
2 but most people are somewhere in the middle. They
3 may favor or not favor the death penalty to some
4 degree, but the type of person that these folks are
5 looking for is someone who is able to set aside
6 whatever their own personal thoughts or beliefs are
7 and to follow the law. Both sides have the right
8 to have jurors that will follow the law and are
9 able to follow the law. Now if a person is unable
10 because of their thoughts on the matter, not able
11 to follow the law, that is fine. Everyone is
12 entitled to their own beliefs, but in order to pick
13 a fair juror, we have to have that certain middle
14 ground in a person.

15 The other question that will be put to
16 you is concerning any pre-trial publicity that you
17 may have been exposed to. Again, can't have a fair
18 trial if we have anyone on the Jury that has their
19 mind made up about the outcome. Each juror is
20 going to have to decide this case on the evidence
21 and the law presented in this Courtroom.

22 Now it is not unusual that many of the

1 prospective jurors are familiar to some degree with
2 the facts of this case, which receive publicity as
3 most cases of this nature do. But the questions,
4 the question you have to ask yourself is, "Do I
5 have something in my mind about this case that
6 would make it difficult or impossible to set aside
7 so that I could judge the matter fairly on the
8 evidence that I'll hear?" Those are the two main
9 issues.

10 EXAMINATION BY MR. BECKER OF MR. SEELBACH:

11 Q. Good morning, Mr. Seelbach. Mr. Seelbach, my
12 name is Chris Becker. I work for the
13 County Prosecutor's Office. This is
14 Mr. Bailey. You may recall last week, he
15 was in Court with you and I was in
16 another matter, so I couldn't join him at
17 that time. I assume you recall
18 Mr. Juhasz and Mr. Ingram and Miss
19 Roberts from last week as well.

20 As the Judge has indicated to you,
21 and it is really important that we get to
22 speak to you for this short period of

1 time, because this is really the only
2 time in this case where we get to talk to
3 you directly. We get to find out what
4 your views are and by all means, if you
5 have any questions about this procedure
6 or the process or the questions that I'm
7 asking you, by all means, stop me and
8 say, "Hey, I don't understand, or explain
9 that to me," because what happens is if
10 you are selected as one of the jurors in
11 this case and we start this trial, and
12 you are seated over here in the Jury box,
13 we can't speak to you anymore. It is the
14 rules of the Court, it is the law that we
15 can't speak to the jurors while the case
16 is pending. After the case, you can feel
17 free to talk to us and now before, but
18 when you are hearing the evidence and the
19 testimony, and when you are deliberating,
20 we can't go to you and say, "Hey, by the
21 way, Mr. Seelbach, vote this way or this
22 is what this one piece of evidence

1 meant." We have to talk to the
2 witnesses, and you have to listen. So, I
3 want to make, emphasize that by all
4 means, if you have any questions or if
5 you don't understand what I'm asking you
6 or I'm not making it clear, by all means,
7 stop me and tell me.

8 First of all, let me thank you very
9 much. This is, I think you are going to
10 find that this is one of the most
11 important civic duties that you can
12 perform as a citizen of this country and
13 probably short of serving in the Armed
14 Forces, it is one of the most important
15 functions that you can perform as a
16 citizen of our country. Starting out
17 here, the Judge has indicated to you that
18 there's really sort of two areas that
19 we're going to talk about and then just
20 some general questions.

21 You filled out a questionnaire and
22 you have provided it to us and you have

1 indicated that you could and you do
2 believe in the death penalty in capital
3 punishment?

4 A. Yes.

5 Q. This particular case is a case involving that
6 issue. And we're going to be a little
7 presumptuous here because if you recall,
8 I told you we can't speak to you once the
9 case gets going, and in Ohio, capital
10 cases are sort of two phase cases.
11 There's a first part where you are going
12 to determine and we have to prove whether
13 she's guilty by proof beyond a reasonable
14 doubt. And if we get to that point and
15 if you find her guilty by proof beyond a
16 reasonable doubt of the homicide crimes
17 as well as some specifications to those
18 crimes, then we'll come back a couple of
19 dates later in a second phase and that is
20 the phase where you will determine
21 whether or not the punishment should be
22 the death penalty. It doesn't have to be

1 the death penalty, because as the Court
2 indicated to you, there are four
3 different penalties that would be
4 potential. There would be death, there
5 would be life with no parole, life with
6 parole after 30 years, and life with
7 parole after 25 full years served in
8 prison.

9 But like I said to you, we have to
10 be a little presumptuous here and assume
11 we're in that second part here now. But
12 remember, we may never get to that part
13 because you may find her innocent and we
14 may all go home after that first part.
15 You may say the State didn't prove their
16 case by proof beyond a reasonable doubt,
17 that is the end of the story, we're all
18 going home.

19 Assume we're in that second phase
20 now where the death penalty is an option
21 for you. Are you of such a belief in the
22 death penalty, that you feel no matter

1 what her circumstances may be, and what
2 evidence may be presented, that you would
3 have to impose the death penalty?

4 A. No, not necessarily.

5 Q. You would fairly consider all of the other
6 options?

7 A. Yes.

8 Q. What we call the life options?

9 A. Right.

10 Q. You don't have a mind set that if you got to
11 this second phase and you went into the
12 Jury room to deliberate on the penalty
13 portion, that you would say, "I know we
14 have these other life options, but I'm a
15 real strong death penalty person, and I'm
16 not going to change my mind. She has to
17 prove to me why she shouldn't get the
18 death penalty"?

19 A. No.

20 Q. You would follow the Court's instructions and
21 you would follow, because the burden is
22 on the State, we have to prove to you why

1 the death penalty, and we have to prove
2 it by proof beyond a reasonable doubt,
3 why the death penalty is an appropriate
4 penalty in this case. So you would
5 follow the law?

6 A. Yes, Sir.

7 Q. And your opinion is not so strong regarding
8 the death penalty that you would sort of
9 gravitate or move towards that penalty or
10 that option and exclude the others?

11 A. Automatically, no.

12 Q. And I noticed in your questionnaire that you
13 indicated that you feel the punishment
14 should fit the crime, correct? And a lot
15 of people will come in here and say, "You
16 kill somebody, you should die." You are
17 not of that mind set, are you?

18 A. No.

19 Q. You feel that you would be able to weigh all
20 of the different factors and follow the
21 Court's instructions in making a
22 determination as to what the sentence in

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1 this case should be?

2 | A. Yes.

3 Q. And I thank you very much. There's no right
4 or wrong answer here, we're just trying
5 to get your opinions, because we're
6 trying to decide a very important case
7 here that obviously involves a death. It
8 involves Miss Roberts and her life, the
9 rest of her life, and we want to be fair
10 to everyone involved here, both the
11 Defense and the State.

12 Now, I think you also mentioned that
13 you had heard some things about this case
14 in the media, is that correct?

15 A. Well, when they mentioned her name, her name
16 didn't mean anything. I didn't remember
17 her name at all.

18 Q. What did you remember? What did come to mind?

19 A. Again, if this isn't true, then let me know,
20 but just from recalling back what murder
21 this was, whether she allegedly is
22 involved in the name that I remember is

1 Mr. Fingerhut. If that is it. That is
2 the only name I remember out of this
3 whole thing.

4 Q. Do you remember that back from over a year ago
5 when this happened, back in December of
6 2001, or do you remember it just
7 recently?

8 A. This was way back.

9 Q. So you remember that about a year and a half
10 ago when these events were alleged to
11 have occurred?

12 A. Yes.

13 Q. Did you form an opinion at the time?

14 A. I really didn't know anything about it other
15 than what I read in the paper. I didn't
16 form an opinion. A lot of murders in
17 Youngstown, Warren area. I didn't really
18 follow it.

19 Q. You were just basically --

20 A. It is just news that I heard about.

21 Q. And one of the reasons you are here and one of
22 the reasons all of the jurors are here is

1 because you are voters and of course, it
2 is not mandatory that you vote in this
3 country, it is optional, and most people
4 that vote do so because they have an
5 interest in their community. So it is
6 not unreasonable that people have an
7 interest in their community. We read
8 about not only the crimes, but what the
9 County Commissioners are doing and their
10 elected officials, the Mayor and the
11 Council people and the Engineer and the
12 Auditor and the Prosecutor and the Judges
13 do in their community. No one is
14 faulting you for knowing something about
15 the case. What we have to know, what we
16 have to know is from what you have heard
17 about this case, have you formed an
18 opinion about whether Miss Roberts is
19 guilty or innocent?

20 A. No.

21 Q. And I can't recall from your questionnaire,
22 have you ever served on a Jury before?

1 A. No, Sir.

2 Q. You understand that the basic premise, and
3 what we're trying to do here is you and
4 your fellow jurors, we want you to
5 determine this case based solely upon the
6 evidence you hear in this Courtroom?

7 A. Right.

8 Q. And that is sort of why we're asking you these
9 questions. It is not sort of. It is the
10 reason we're asking you these questions.
11 I'll tell you, we have already had some
12 jurors come in here and say, "I read
13 about the thing. I saw it on television.
14 I follow the local news pretty heavily.
15 I think she's guilty and I can't change
16 my mind." That is not a fair juror, you
17 would agree? We need somebody who is
18 going to come in here and say, "I may
19 have read something about it. I may have
20 seen something about it. I may not know
21 anything about it. I'm going to
22 determine whether she's guilty or

1 innocent based on what I hear in this
2 Courtroom and the witnesses in that chair
3 and any Exhibits and testimony or
4 evidence, whether they be physical or
5 whatnot. That is what I'm going to do."
6 You feel you could do that, correct?

7 A. Yes, Sir.

8 Q. And what little you do know about this case
9 that you have heard in the media has not
10 influenced you in having an opinion about
11 it?

12 A. No, I didn't recognize her name. I didn't put
13 her with that situation at all.

14 Q. I notice on your questionnaire that you
15 actually, you watch a couple of shows
16 that actually involve criminal
17 investigations and trials and whatnot.
18 you watch CSI and JAG. I assume you have
19 probably seen Law and Order sometimes?

20 A. Never watch that.

21 Q. I watch Law and Order, I used to anyway before
22 I had four kids. Only because it is a

1 little more truthful. Because sometimes
2 the Prosecutor in those cases do lose.
3 To me that is reality sometimes. You
4 understand that these are television
5 shows and they are a lot different. One
6 of the things that we have a problem with
7 is particularly, I almost want to say
8 that CSI is one of the worst shows for
9 Prosecutors ever, because people now
10 expect the State to have evidence of
11 everything. Fingerprints -- well, they
12 touched the thing, there should be
13 fingerprints there and this should be
14 everything. It just doesn't work that
15 way sometimes.

16 You are probably familiar with some
17 of the local police departments, if we
18 got a crime and I'm not trying to
19 disparage any local law enforcement
20 agency. If we got a crime in some little
21 podunk burg in Trumbull County, we might
22 have a guy who is a part-time police

1 chief, works at the mill for security
2 most of the time. They had to come out
3 and check the lock, there may be
4 fingerprints, smudges all over a window
5 and they may put their hand on to look
6 in. You understand that reality
7 sometimes is different than what you see
8 on television?

9 A. CSI and JAG are more entertaining.

10 Q. I have not seen JAG a whole lot, but I have
11 seen CSI. One of the things that you are
12 going to have to deal with in this case
13 is what is called the burden of proof,
14 which in this case, obviously because
15 it's a criminal case is proof beyond a
16 reasonable doubt. And a lot of people
17 will describe that and probably the best
18 way I have heard it described is
19 basically looking at a glass of water.
20 The old saying I guess is that glass half
21 empty or half full. In civil cases, for
22 instance, if this was a case involving --

1 if Miss Roberts were a doctor and
2 Mr. Bailey and I represented someone who
3 had been operated on and lost their sight
4 or lost their sense of feeling in their
5 right arm because of negligent operation,
6 we would have to fill that glass up just
7 beyond half. That would be our burden of
8 proof. That is called a preponderance of
9 the evidence. But in this setting, the
10 burden of proof for the State and for
11 Mr. Bailey and I is going to be proof
12 beyond a reasonable doubt. Now, I'm
13 going to tell you flat out, that doesn't
14 mean the glass is full to the very top.
15 So, if you touch it, water spills out of
16 the top. It is pretty close to the top.
17 It maybe depends on the size of the
18 glass, an inch, quarter inch, maybe two
19 inches from the top, but it is definitely
20 more than half and it is getting up there
21 towards the top. It may be 90 percent
22 full, it may be 85 percent. It may be 99

1 percent full. Depending on each
2 individual juror, everyone is going to
3 have a different idea of what beyond a
4 reasonable doubt is. You understand that
5 concept?

6 A. Yes.

7 Q. And you would hold to us that burden and you
8 wouldn't say, "Hey, listen, they proved a
9 couple of things. I know they didn't
10 prove the one element that the Judge
11 instructed on, but I'm not really worried
12 about that." You had told us, because
13 every case, every case here, every charge
14 in this indictment has different
15 elements. So we have to prove all of
16 those elements by proof beyond a
17 reasonable doubt. And in fact, it is
18 sort of like maybe a waitress putting
19 drinks on a table and there might be five
20 drinks on the tray that she's bringing
21 over. All of those have to be proved by
22 beyond a reasonable doubt. She can't

1 bring over any empty glasses. We can't
2 bring any empty glasses to you and say,
3 "Don't worry about that one element."
4 You know some other things have happened.
5 You would agree that you would hold us to
6 our standard of proof, where ever in your
7 mind that glass gets to beyond a
8 reasonable doubt, correct?

9 A. Yes, Sir.

10 Q. Now, sort of dovetailed into that or in
11 association with that, is what we call
12 Miss Roberts and every Defendant's Fifth
13 Amendment right, and the presumption of
14 innocence. I assume you have heard of
15 those terms before as well, correct?

16 A. Yes.

17 Q. The essence of that right is, Miss Roberts can
18 sit over there and Mr. Ingram and
19 Mr. Juhasz can do nothing. And in fact,
20 they -- I don't think this is the kind of
21 case where they are going to do that and
22 I would be very surprised if you never

1 heard another word from them after today,
2 but in reality, every criminal Defendant
3 can sit over there with their Attorney,
4 and not say a thing to the Jury. Not
5 question one witness, not present to you
6 one exhibit, and you would have to find
7 her -- I'm sorry, not guilty if we didn't
8 meet our burden. Ball is in our court in
9 every criminal case and we have to prove
10 beyond a reasonable doubt. You wouldn't
11 have a problem for instance in this case,
12 if you found out that someone was dead,
13 because it is a homicide case, and the
14 State proved maybe three or four of the
15 elements of the crimes or four or five of
16 the elements, and they never presented
17 anything. You would have to vote to find
18 her not guilty, correct? If we didn't
19 prove all of the elements. Even if you
20 knew there was a homicide involved,
21 correct?

22 A. Correct.

1 Q. And you wouldn't have a problem doing that?

2 A. No.

3 Q. You would follow the Court's instructions,
4 correct? Now, in this particular case,
5 you are going to hear a term that we
6 refer to which is complicity to murder.
7 I'm going to tell you right now as we
8 stand here on April 15th that Miss
9 Roberts is not the trigger person. There
10 is going to be no evidence presented to
11 you indicating that she fired a gun and
12 killed the deceased in this case. Do you
13 believe you would still be able to
14 impose, if the facts warrant it and
15 assuming we got to the second phase,
16 would you be able to impose the death
17 penalty if we were able to prove the
18 elements that we had to prove in that
19 second phase. Do you think you could
20 sign a verdict calling for the death
21 penalty if we proved our case?
22 A. Yes, if you proved that she was a part of it.

1 If they proved that they were all a part
2 of this.

3 Q. Again, you wouldn't do that automatically,
4 because she was involved in it, would
5 you?

6 A. No.

7 Q. You would listen to the evidence and the
8 testimony and the way the second phase
9 sort of works is there's an obligation
10 upon us, just like in the first phase,
11 where we have to prove some things to you
12 beyond a reasonable doubt. And we have
13 to meet that burden. We may not meet it.
14 If we don't meet it, you can't impose the
15 death penalty. You agree with that?

16 A. Yes.

17 Q. But we may very well meet it. And they may
18 present to you some things to try and tip
19 the scale back, and in her favor. You
20 have to do this weighing again and you
21 are going to have to do that throughout
22 the case. You don't have a problem doing

1 that?

2 A. No.

3 Q. Now, only because you haven't served on a Jury
4 trial before, I want to touch on you with
5 sort of what your function is. Again,
6 this isn't a test. There's no right or
7 wrong answer, but coming in here today,
8 what do you think your job as a juror
9 will be in this case if you are selected?

10 A. To listen to the evidence.

11 Q. And then you make your determination based
12 upon the evidence, whether there's guilt
13 or innocence and whether the State has
14 proven its case by proof beyond a
15 reasonable doubt. Sometimes the
16 examples -- we use different examples
17 sometimes, but you would agree that you
18 have to weigh the evidence. Whether it
19 is testimony or whether it is physical
20 Exhibits. You have to say, "Hey, does
21 this really match up to what the State is
22 alleging," correct?

1 A. Correct.

2 Q. And I'll use this because I can't think of any
3 other examples and I have used it for a
4 long time. So I just keep using it.

5 Let's say there's an accident out here on
6 High Street and Park Avenue, right out
7 here on the corner. Right outside the
8 Courthouse and we're prosecuting the
9 individual for blowing through a traffic
10 light there. Just barreling through the
11 red light and hitting somebody and maybe
12 there's some injuries, maybe even a death
13 in that case. Now let's say Mr. Bailey
14 and I present to you one witness. Do you
15 believe in any case, the State could meet
16 all of its burdens with just one witness,
17 if that witness was good enough?

18 A. If that witness saw everything.

19 Q. And on the same side, we may present five or
20 six witnesses and still not meet our
21 burden of proof, correct?

22 A. Correct.

1 Q. So, let's assume the car wreck happens and the
2 person who is going let's say west on
3 High Street and they are coming down from
4 Howland. They come up High Street, they
5 are coming across and they are going to
6 park right out in front of the
7 Courthouse. As they were coming across
8 Park Avenue, this guy blew the
9 intersection at Market, blew the
10 intersection here at High and crashed
11 into the poor guy who is in this car.
12 Now, if the one witness out there is a
13 very credible witness, let's say maybe a
14 clergyman or maybe it is one of the
15 Judges here in the Courthouse. Maybe it
16 is someone that is highly respected in
17 the community, very fair and impartial
18 person and says, "Yes, I saw the whole
19 thing. I walk this Courthouse Square at
20 noon. I walk around the block and I have
21 noticed that sometimes people miss the
22 light, so I am always very careful to go

1 with the walk signals and I only cross at
2 the corners and the walk signals. But
3 even before I do that, if I get the walk
4 signal and the light is green, I look
5 both ways before I cross, because I have
6 seen people miss that light. And as I
7 was there that day, I saw the light
8 change. I saw the walk signal, I looked
9 both ways and I saw this guy coming
10 through the intersection at Market and he
11 just blew through." That might be enough
12 for you. Assuming that the other
13 elements were proven in the crime. And
14 now let's change that up a little bit.
15 Let's assume the witnesses are Mr. Bailey
16 and I. The victims, that it is his
17 family. They were waiting there for him
18 and they were going to meet him in front
19 of the Courthouse, but they went to go
20 get ice cream at Hippodrome. It is his
21 wife, his brother, his mother, his father
22 and two of his kids. Let's assume they

1 say, "This guy barreled through the
2 thing." You might have some concerns
3 about their testimony, right?

4 A. Could be.

5 Q. Based upon their relationship. Let's assume
6 that they all -- some kind of genetic
7 defect in the family and all had to wear
8 glasses, those coke bottle glasses, and
9 all the of them had forgotten them that
10 day. Might have some more problems with
11 their testimony. That is the kind of
12 thing that you would have to do as a
13 juror. And you feel you would be able to
14 do that function and to determine maybe
15 who has got more interest or bias in any
16 particular case?

17 A. Yes.

18 Q. Now, one of the other things that we may run
19 into in this particular case is what we
20 call circumstantial evidence. And I am
21 assuming you have heard of that term as
22 well. And there's many, many ways to

1 describe circumstantial evidence, but one
2 of the ways is, and I don't know, do you
3 watch the local news?

4 A. Yes.

5 Q. Local weather?

6 A. Yes.

7 Q. I don't know which channel you watch, but
8 let's assume you go to bed at 11:00 or
9 11:30 and you watch the news. At 11:15,
10 right before the sports, and they got the
11 weather on there, you look out your
12 window and it looks pretty clear tonight.
13 Maybe a couple of clouds floating by, but
14 you can see some stars and the weatherman
15 comes on and says, "We're going to get a
16 bad thunderstorm tonight. Bad weather,
17 going to rain, going to get a lot of
18 rain." And it hasn't rained in three or
19 four days, your driveway is dry. He
20 shows you the big weather map that he
21 stands in front of and he says, "There's
22 this line of green and yellow and red

1 from Toledo to Cincinnati and it is
2 moving east at 30 miles an hour." You go
3 to bed, look outside, your car is in the
4 driveway completely dry, go to bed. You
5 might wake up in the middle of the night
6 and you hear some thunder or hear
7 something. You hear some noise. You see
8 some flashes of lightning through your
9 blind that's pulled down, that you see it
10 is lightning up outside. You wake up,
11 the ground is all wet. The car is wet.
12 Water trickling down the street into the
13 sewers. You can assume it had rained the
14 night before. It may be clear as a bell
15 the next morning and drying up again, but
16 you can make that inference, even though
17 you never saw one drop of rain hit the
18 ground, you can assume that it rained?

19 A. Right.

20 Q. And sometimes we ask jurors to do that. And
21 in fact, the Court is going to tell you
22 that that kind of evidence where you can

1 make that inference, is just as much
2 weight as direct evidence. If you had
3 gone outside at midnight and got rained
4 on and held an umbrella there, that is
5 just as good as evidence as the
6 circumstantial evidence and the direct
7 evidence are equal. So you could do that
8 as well, you feel?

9 A. Yes, Sir.

10 Q. And we're being probably over simplistic here,
11 but we're trying to do, trying to find
12 out about you and your qualifications as
13 a juror. Another important area that the
14 Court is going to tell you and the Court
15 tells everybody in every criminal case,
16 and it is difficult sometimes, is that
17 you cannot consider sympathy in making
18 your determination of guilt or innocence.
19 For instance, you can't feel sympathetic.
20 You are going to see, I'm going to tell
21 you right now, you are probably going to
22 see some pictures, because it's a

1 homicide case of a victim. It is Mr.
2 Fingerhut. You don't feel that you would
3 look at those photos and say, "My gosh,
4 look at what happened to this poor guy.
5 I know the State didn't prove everything,
6 but I'm going to find her guilty anyway,
7 because I can't get these pictures out of
8 my mind." Would you do that or would you
9 not do that?

10 A. I could do it. You have to prove it.

11 Q. I would still have to prove it to you, even if
12 you saw some pictures that were gruesome.
13 On the other side of that, you wouldn't
14 say, "Well, the State proved their case,
15 they have proven every element beyond a
16 reasonable doubt, but I see Miss Roberts
17 over there, I really feel sorry for her.
18 She seems sympathetic. She seems so
19 nice, I can't find her guilty or I can't
20 impose the death penalty. I just really
21 feel sorry for her." You wouldn't do
22 that either, would you?

1 A. No.

2 Q. Is there anything that you feel you should
3 tell us or that I have not covered or
4 that you feel is important for me to know
5 that maybe has come to mind as we have
6 been speaking here? Anything that you
7 feel would affect your ability to sit as
8 a fair and impartial juror?

9 A. No.

10 MR. BECKER: Thank you very much.

11 EXAMINATION BY MR. INGRAM OF MR. SEELBACH:

12 Q. Good morning, Mr. Seelbach. I am Jerry
13 Ingram, and there is John Juhasz. We
14 share the responsibility of representing
15 Donna Roberts who is on trial for her
16 life. And as you can understand, it is a
17 very serious thing and we feel we should
18 take every reasonable precaution in
19 selecting a fair minded juror and the
20 same type of juror that you or I would
21 want to decide our case if we were on
22 trial; does that sound fair enough to

1 you?

2 A. Yes.

3 Q. This experience, this Voir Dire experience you
4 are going through right now is a lot like
5 a job interview. And you work where at,
6 Altronics in Girard?

7 A. Yes.

8 Q. When you got the job at Altronics or at Disney
9 Land or wherever, you chose the job that
10 you were going to apply for?

11 A. Right.

12 Q. In this particular situation, I guess you were
13 lucky or unlucky enough that the spin of
14 the Jury wheel resulted in you being
15 asked to come here?

16 A. Correct.

17 Q. But it's a job interview. And we're
18 interviewing you for the most important
19 job there is, or one of the most
20 important jobs there is. The job of
21 finding the truth and determining the
22 fate of another human being. Not

1 everyone is up to assuming that
2 responsibility. My first question to you
3 is, how do you feel about being asked to
4 assume that responsibility?

5 A. I feel it is my responsibility as a citizen
6 and as part of this country.

7 Q. You think it is a challenge?

8 A. Yes, I believe it's a challenge.

9 Q. You think you are up to the challenge?

10 A. Sure.

11 Q. If selected, your job responsibility will be
12 to fairly determine the facts of the
13 case. You understand that?

14 A. Correct.

15 Q. Right now, your job responsibility is to tell
16 us if you would have either, if you would
17 have a problem giving either side a fair
18 shake during any stage of these
19 proceedings. Do you understand that?

20 A. Yes.

21 Q. How do you feel about the American Jury
22 system?

1 A. On a whole?

2 Q. On a whole.

3 A. It is a fair system. There's checks and
4 balances. I suppose you see what is
5 going on in Iraq, we have a pretty good
6 justice system.

7 Q. Do you understand that our system only works
8 when we can get 12 good people like
9 yourself to come in here to sit in the
10 Jury box, share their views, assume their
11 responsibility and do fairness?

12 A. Yes.

13 Q. Do you also understand that it only works when
14 jurors who are being interviewed for
15 their jobs, the job of being jurors,
16 openly and honestly answer the questions
17 put to them?

18 A. Yes.

19 Q. And you know there are no right or wrong
20 answers here. There's only one mistake
21 that you can conceivably make, and that
22 is if you have answered a question and

1 instead of telling me the way you really
2 feel, you would tell me what you think we
3 want to hear. Am I making sense?

4 A. Yes, I understand.

5 Q. I would ask you not to do that. No matter
6 what it is, no matter how you feel,
7 please share your thoughts with me so we
8 can make a determination whether you are
9 comfortable sitting on this Jury. Does
10 that sound fair to you?

11 A. Sure.

12 Q. Now as you know, I believe by now, this case
13 boils down to the Government's allegation
14 that Donna Roberts plotted or conspired
15 with a male companion, Nate Jackson, to
16 cause the death of Robert Fingerhut. And
17 as I understand it, back in December of
18 2001, you saw, read or heard something
19 about this case?

20 A. Yes.

21 Q. When you came to the group orientation down
22 the hallway last Tuesday, you did not

1 recognize the name Donna Roberts?

2 A. No.

3 Q. But as you went through the orientation
4 process, the name Mr. Fingerhut popped
5 into your head?

6 A. I was trying to associate what murder trial it
7 was associated with because I do read the
8 papers and I watch the news. Her name
9 was not familiar to me at all. I think
10 after I left the Courthouse, it dawned on
11 me that this must be the Fingerhut case,
12 but that is the only thing I knew. I
13 never associated her name with it.

14 Q. Can you tell me everything, and you probably
15 are going to have to search your memory
16 bank for this one. Can you tell me
17 everything you remember seeing, reading
18 or hearing from the news media about the
19 death of Robert Fingerhut?

20 A. What I remember hearing or reading that
21 someone broke into the house, he was
22 shot, something about a car being stolen

1 or taken. That is most of what I really
2 remember about it.

3 Q. Do you remember hearing --

4 A. I don't remember details or anything like
5 that. I don't remember details of how
6 they got into the house, if they broke
7 through a window or something of that
8 nature. I just don't recall.

9 Q. Do you remember hearing or reading anything
10 about letters or tape recordings?

11 A. No.

12 Q. What you saw or read or heard about this case,
13 from what you saw, read or heard about
14 this case, have you formed any
15 impressions?

16 A. The only impression that someone was murdered.
17 That was it.

18 Q. Do you recognize the name Nate Jackson?

19 A. No, I didn't recognize that name, either.

20 Q. Can I ask you when in point of time you filled
21 out your questionnaire, was it today, or
22 a couple of days ago?

1 A. It was last night.

2 Q. I have asked you to be honest with me, so I'm
3 going to be honest with you. In reading
4 this questionnaire, particularly your
5 responses on your views regarding capital
6 punishment, I have some concern in my
7 mind about your ability to fairly
8 consider the life imprisonment sentencing
9 alternatives if we ever get to a second
10 phase. Thinking back on your answers as
11 they are in here, you remember them? Can
12 you understand my concern?

13 A. Yes, I believe so.

14 Q. If you thought I was all wet, I want you to
15 tell me.

16 A. I remember in there and I thought when I wrote
17 it, I put down capital punishment for
18 murder and rape. I know I put that. I
19 thought it will probably spark some
20 questions.

21 Q. It will spark some questions. Could you in
22 further detail explain your views on

1 capital punishment to me?

2 A. I feel those are things that -- I mean I look
3 as if it was my wife or daughter that was
4 raped or something, I feel there should
5 be a death penalty with that. Same thing
6 with murder, if someone takes someone
7 else's life. There's extenuating
8 circumstances. If it was a temper thing
9 or something that happened, possibly no
10 death penalty. If it is a premeditated,
11 planned out, thought about it, I'm going
12 to take your life type thing, there
13 should be a death penalty for that.

14 Q. In a couple of your responses, you include the
15 word "justice," and in response to the
16 question about why we have a death
17 penalty, I believe you said, "to serve
18 justice, punishment should fit the
19 crime."

20 A. Yes.

21 Q. And in response to another question, you said
22 there needs to be justice, I believe the

1 death penalty is a deterrent?

2 A. Yes.

3 Q. I am talking to you right now about your
4 personal views. We'll talk about the
5 law, instructions of law and your ability
6 to follow the law later. I want to
7 determine first of all how you personally
8 feel about these things, and then we'll
9 talk about whether they impact your
10 ability to follow the law or not.

11 A. I understand.

12 Q. And if they do impact your ability to follow
13 the law, whether you can set that aside.
14 But for now, we're just talking about how
15 you personally feel. By the way, do you
16 have a relative by the name of Larry?

17 A. No.

18 Q. Aggravated murder in the State of Ohio is
19 purposely and for the sake of our
20 discussion, purposely is the word on
21 purpose. Does that sound reasonable?

22 A. Right.

1 Q. Purposely causing the death of another with
2 prior calculation and design. And prior
3 calculation and design is advance
4 planning. You familiar with the old term
5 premeditation?

6 A. Yes.

7 Q. It is sort of like premeditation. Advance
8 planning. Are your views regarding
9 capital punishment such that in cases
10 where a Defendant has been found guilty,
11 now you can only be found guilty, and I'm
12 sure after your conversation with
13 Mr. Becker, someone can only be found
14 guilty after the Jury has been convinced
15 beyond a reasonable doubt of the
16 Defendant's guilt?

17 A. Correct.

18 Q. So after conviction, the only doubt that would
19 remain would be possible, imaginary or
20 unreasonable doubt. Does that make sense
21 to you?

22 A. Okay.

1 Q. In your personal views, for someone who has
2 been convicted of aggravated murder, that
3 is planned in advance, planned murder.
4 Would capital punishment be the preferred
5 punishment?

6 A. Preferred, automatic, or if they are found
7 guilty and it is proven beyond the shadow
8 of a doubt and the death penalty is an
9 option, that would be an option, yes.
10 Whether it is preferred, it is going to
11 depend on proof, if they prove their
12 case.

13 Q. They have already proven guilt. Do you
14 understand that?

15 A. Okay.

16 Q. So when you say they proved their case, are
17 you talking about guilt or are you
18 talking about the appropriateness of
19 punishment?

20 A. You are talking about appropriate punishment?

21 Q. I am. I'm trying to figure out what you meant
22 by if they proved their case. You

1 understand, you never decide penalty
2 until somebody has been convicted?

3 A. Correct.

4 Q. So the State has already proven beyond a
5 reasonable doubt in any case, in which a
6 juror is called upon to determine
7 punishment that the Defendant did it.

8 A. Okay.

9 Q. Now, knowing that a Defendant has committed an
10 aggravated murder with premeditation, in
11 your personal view now, do you think that
12 the death penalty should be the automatic
13 penalty, that it should be the preferred
14 penalty, that there should be options?
15 You tell me how you feel.

16 A. I don't feel it's automatic, no, but is it a
17 possibility and top of the list, well,
18 yes, it is one of the options. I am told
19 there's four options. That is one of
20 them. And if she's found guilty of
21 planning and plotting this all out, then
22 yes, that would be a high option.

1 Q. The Judge told you on last Tuesday in the
2 orientation instruction and I believe
3 told you this morning in the preliminary
4 instruction, that if you start a second
5 phase, that all four penalties should
6 start out equally in your mind?

7 A. Correct.

8 Q. Can you explain for me, please generally,
9 philosophically, your views on life
10 imprisonment as an alternative to the
11 death penalty?

12 A. My views as opposed to -- I don't understand
13 the question.

14 Q. Some people don't believe in life imprisonment
15 for people convicted of murder. Are you
16 of that school?

17 A. Not necessarily. We have already come up with
18 one scenario that I have already been
19 told, she didn't pull the trigger so
20 there's a question right there as to
21 death penalty or life in prison in my
22 mind.

1 Q. Okay. Have you ever heard someone say that
2 they don't believe in life imprisonment
3 because society shouldn't have to pay the
4 cost of incarceration?

5 A. I have heard that, yes.

6 Q. Do you have any particular feelings about the
7 cost issue?

8 A. No. Sometimes life in prison could be worse
9 than death.

10 Q. In your questionnaire, you answered the
11 question regarding problems with the
12 justice system by the main problem is
13 repeat offenders, too much crime, drugs
14 aren't being stopped. That answer
15 regarding repeat offenders, does that
16 have anything to do with the parole
17 process?

18 A. I don't really -- my answer to that wasn't
19 thinking of parole, no. I was thinking
20 of light sentences or people on drugs and
21 they get off and go out again. Somebody
22 is pulled in here, in Court, that they

1 have got a rap sheet a mile long. Why
2 does it take so long to get so far that
3 they are still out committing crimes?
4 That is what I meant by repeat offender.
5 I wasn't thinking of parole.

6 Q. You were referring to as I understand what you
7 are saying, and don't let me put words in
8 your mouth --

9 A. I wasn't thinking of parole. I was thinking
10 if someone burglarized this house, they
11 are arrested and they are out walking the
12 streets. They burglarize this house.
13 They attack this person. They are out
14 walking the streets and they are back in
15 Court again for something else. That is
16 what I was looking at as repeat
17 offenders.

18 Q. When you debated, you did take a position in
19 some debate or discussion regarding the
20 death penalty?

21 A. Yes.

22 Q. Do you recollect any of those discussions?

1 A. Yes. It was a long time, it was during a
2 college course actually in business. It
3 was part of a course, capital punishment
4 came up.

5 Q. It was an assignment?

6 A. No. I think it was a class discussion. I
7 can't remember the details how it came
8 up. The capital punishment came up. The
9 whole essence of the thing became a race
10 thing at that time. People believed in
11 the death penalty because most people
12 were black and some people were black in
13 the class and they said that is the only
14 reason you are for the death penalty
15 because everybody in prison was black.
16 That is why I basically remember that.
17 It was a conversation that came up in a
18 business class.

19 Q. Have you ever considered a political
20 candidate's views on capital punishment
21 in determining whether or not you would
22 vote for that candidate?

1 A. Solely on that? No.

2 Q. Have you ever considered a candidate's views,
3 not solely, but as one factor in
4 determining whether or not you would vote
5 for that candidate?

6 A. Specifically, I can't remember any candidate's
7 platform of capital punishment being a
8 determining factor, no.

9 Q. When was it that you applied for a job at the
10 Ohio State Patrol?

11 A. This would have been late seventies, I
12 believe. I had done security work and
13 was interested in the State Highway
14 Patrol.

15 Q. Where did you do your security work at?

16 A. Penney's at the Eastwood Mall and I worked at
17 Wells Fargo.

18 Q. When you talk about retail in your
19 questionnaire, is that Penney's?

20 A. I was the store director at Toys 'R Us at the
21 Eastwood Mall for approximately nine
22 years.

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1 Q. You had some involvement with processing
2 shoplifting cases -- was that at Penney's
3 or Toys 'R Us or both?

4 A. Toys 'R Us.

5 Q. Would you sign the complaints?

6 A. Yes.

7 Q. And you would give the police statements, then
8 you would go testify?

9 A. Yes.

10 Q. You know that Donna Roberts has been indicted?

11 A. Yes.

12 Q. I also understand, I believe from the Judge's
13 orientation instruction that the fact
14 that she's been indicted is not evidence,
15 and should not be considered by you for
16 any purpose?

17 A. Correct.

18 Q. Does the fact that she's been indicted lead
19 you to believe she must have done
20 something wrong or she wouldn't be here?

21 A. Not necessarily, no.

22 Q. What do you mean by not necessarily?

1 A. There's been people on death row that have
2 been proven to be innocent.

3 Q. Grand Jury proceedings are secret.

4 A. Right.

5 Q. They only hear one side of the issue. Donna
6 Roberts didn't know this case went to the
7 Grand Jury. Mr. Juhasz and I weren't
8 there. We weren't there to test the
9 evidence and all a Grand Jury does is
10 decides if someone should stand trial.

11 A. Correct.

12 Q. Basically, they pass on the hard decision to
13 the jurors who will hear the case.

14 A. Right.

15 Q. The evidence is different, the role is
16 different and it would be unfair to
17 consider that indictment as evidence; do
18 you agree with that?

19 A. Yes.

20 Q. How do you personally feel about the rule of
21 law which requires that jurors presume a
22 Defendant innocent, not guilty?

1 A. I think you need to presume someone is
2 innocent. You have to be based on what
3 is proven in Court. I did have a
4 question about this. The day we were all
5 in Court and we were told to presume
6 she's innocent and they bring her in in
7 handcuffs. To me that is like how -- you
8 expect us to presume she's innocent. But
9 they are leading her in here with her
10 hands behind her back.

11 Q. That is an interesting problem, isn't it?

12 A. Why don't they take them off in the back room?
13 It was just a question.

14 Q. I'm going to explain that to you. The deputy
15 that did that is sort of a green horn, a
16 rookie. The deputy that did that was, I
17 think reprimand is too strong of a word.
18 She was not reprimanded, but certainly
19 told about it, and it was a mistake,
20 but --

21 A. That wasn't a normal procedure?

22 Q. It was a mistake.

1 A. The Judge instructs you to presume she's
2 innocent and they have got her handcuffs
3 on.

4 Q. I'll be honest with you again. All that means
5 is she's not out on bail.

6 A. Right.

7 Q. People can't afford bail every day.

8 A. Right.

9 Q. And you talked about innocent people who were
10 on death row that had been convicted.
11 Well, I bet they didn't get bail, and
12 there's people who are admitted to bail,
13 who are convicted every day. Bail has
14 nothing to do with it. Do you agree with
15 me?

16 A. Yes.

17 Q. And I got way ahead of myself with you.
18 Forgive me. I have a concern about
19 standing up here talking with you about
20 punishment. And my concern is quite
21 simply this. That you might get some
22 inkling in the back of your mind that if

1 Ingram and Becker are standing up here
2 and talking to me about punishment, they
3 must think I'm going to have to decide
4 the issue of punishment. I want you to
5 know that nothing could be farther from
6 the truth.

7 A. The Judge explained that the very first day.

8 Q. You got a handle on that?

9 A. Right.

10 Q. We're not predicting you will ever have to
11 decide the question of punishment.

12 A. Right.

13 Q. And if at the first phase, the Jury finds
14 Donna Roberts not guilty, what would
15 happen?

16 A. We're done.

17 Q. We would all pack up our bags and go home,
18 wouldn't we?

19 A. Right.

20 Q. The trial that you are called for, is State of
21 Ohio versus Donna Roberts. It is about
22 the guilt or innocence of one person and

1 one person only. Donna. Throughout the
2 course of these proceedings, you will
3 hear the name Nate Jackson. And you may
4 conclude that Nate Jackson did what the
5 State says he did. That is not what
6 we're here to determine. You understand
7 that?

8 A. Correct.

9 Q. You would be here to determine whether Donna
10 Roberts helped him or not. Will you hold
11 the State of Ohio to its burden of
12 proving that beyond a reasonable doubt?

13 A. Yes.

14 Q. In support of its allegations, that Donna
15 aided or participated in the death of
16 Robert Fingerhut, the State will present
17 various letters, or recorded
18 conversations between Donna and Nate.
19 How about that? I ask you, if you heard
20 anything about letters and conversations,
21 and then I tell you about them. You are
22 going to get letters and conversations.

1 And to be further honest with you, some
2 of them are sexually explicit and down
3 right offensive. But the charge here is
4 murder, not loose morality.

5 A. Right.

6 Q. Would you have any problem giving a scarlet
7 woman a fair shake?

8 A. No. I feel one doesn't have anything to do
9 with the other.

10 Q. No matter how shocked or offended you may be
11 by the sexual nature of the evidence,
12 your job responsibility as a trial juror
13 will be to test the State's evidence to
14 determine whether it ties Donna to the
15 death of Robert Fingerhut. Will you do
16 that?

17 A. Yes.

18 Q. Would you have the courage to acquit, vote not
19 guilty, if you felt a not guilty verdict
20 was justified by the evidence?

21 A. Yes, if they can't prove it.

22 Q. Have you ever seen the movie True Crimes

1 starring Clint Eastwood?

2 A. No.

3 Q. I want to go back to penalties for just a
4 second. You understand that it is
5 potentially -- and potentially only a two
6 phase process?

7 A. Correct.

8 Q. We only get to a second phase in any capital
9 case if the Jury finds beyond a
10 reasonable doubt that the Defendant is
11 guilty of an aggravated murder charge,
12 and guilty of one or more death
13 specifications. Any such Jury that gets
14 to a second phase is then instructed on
15 aggravating circumstances and mitigating
16 factors. And they are told they have to
17 weigh one against the other. And before
18 they could impose, come back with a
19 verdict of death, they would have to find
20 beyond a reasonable doubt that the
21 aggravating circumstances, bad things,
22 outweigh the mitigating factors, by

1 beyond a reasonable doubt, and that death
2 is the appropriate penalty.

3 A. Right.

4 Q. And the State has that burden. Do you
5 understand that?

6 A. Right.

7 Q. Now in light of your view on the death
8 penalty, if you have got to a second
9 phase, and it doesn't have to be in this
10 case, it could be any case. Just a made
11 up case. If you ever got to a second
12 phase, would you expect the Defense to
13 satisfy you that life was the appropriate
14 punishment?

15 A. No, I don't expect the Defense to have to
16 prove anything at this point.

17 Q. Because the burden is on these guys, right?

18 A. Right.

19 Q. When you filed those shoplifting cases, did
20 you ever get cross examined?

21 A. Yes.

22 Q. Was the cross examination of you

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1 professionally conducted? I guess what
2 I'm asking, the lawyer that asked you
3 questions, was he a dork or a decent guy?

4 A. I guess he was fine.

5 Q. Anything about that experience that left you
6 with a sour taste in your mouth that we
7 ought to know about here?

8	A.	No.
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9 Q. And you do understand that during the course
10 of this trial as Mr. Becker predicted,
11 Juhasz and I won't sit on our hands.
12 We'll cross examine witnesses. And we'll
13 try to do it in as professional manner as
14 we can, but if we do something wrong, you
15 hold it against us, not Donna Roberts,
16 right?

17	A. Right.
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18 Q. Have you ever donated any time, money or
19 services to a political candidate?

20 | A. No.

21 Q. Do you belong to any group or organization
22 which is active in any political manner?

1 A. No.

2 Q. In the last five years or so, have you signed
3 a petition on any public issue?

4 A. No.

5 Q. Do you belong to or associate with any group,
6 which has crime prevention, or law
7 enforcement as a goal?

8 A. No.

9 Q. Mr. Becker talked to you briefly about
10 sympathy. The Judge will instruct you,
11 sympathy should have no part in your
12 deliberations, your analysis of the
13 evidence. This is a Court of law, not a
14 Court of sympathy, right?

15 A. Correct.

16 Q. And you shouldn't let feelings of sympathy
17 affect Donna Roberts. Do you agree with
18 that?

19 A. Yes.

20 Q. The flip side, it is only natural to feel
21 sympathy for somebody that has suddenly
22 and unexpectedly lost his life. Sympathy

1 for Robert Fingerhut should not affect
2 your evaluation of the evidence. Do you
3 agree with that?

4 A. Yes.

5 Q. And that may be tougher to do than it sounds,
6 because you are going to see some
7 photographs. A gunshot wound point blank
8 to the back of the head. Coroner's
9 photographs. All of that will arouse an
10 emotional response from you. And
11 whatever that emotional response is,
12 sympathy or anger, still your job
13 responsibility to test that evidence, to
14 see if it ties her to this offense. And
15 are you willing to do that?

16 A. Yes.

17 Q. We talked briefly about the presumption of
18 innocence, in legal terms. You got two
19 kids, 17 and 14?

20 A. Yes.

21 Q. If you got a call one day that your kids had
22 done something wrong, and you listened to

1 it and said, "Not my kids, that is just
2 too far out of the character." Now, if
3 you were me, usually, you would go okay,
4 yes, they did it, but you get a call. It
5 is out of character. You believe in your
6 heart that they didn't do it. Are you
7 with me?

8 A. Okay.

9 Q. Would you be willing to change your mind
10 without somebody giving you some
11 evidence?

12 A. I already have. I have been called by school
13 principals and I have had to go to
14 school.

15 Q. And what happened?

16 A. And my son said, "Well, I didn't do that."
17 And the principal says -- I sided with
18 the principal.

19 Q. But before you sided with the principal -- by
20 the way, I have also done that, more
21 times than I would like to recollect.
22 But before I sided with the principal, I

1 required that he present to me sufficient
2 information to lead me to conclude that
3 he was in fact correct; did you do that?

4 A. Let's see.

5 Q. If not, I'll have to switch from kids to
6 something else here.

7 A. I know my kids. I have raised my kids. I
8 know what my kids will do and won't do.

9 Q. Let's make this Notre Dame shift from kids to
10 anyone else. A close friend or family
11 member is accused of some wrongdoing.

12 A. They would have to prove it.

13 Q. And they would have to present evidence with
14 you to remove your heartfelt belief?
15 Does that sound like the presumption of
16 innocence to you?

17 A. Yes.

18 Q. Will you presume Donna innocent throughout
19 this proceeding?

20 A. Yes.

21 Q. And if you presumed a friend or a family
22 member innocent, would you willy nilly

1 accept that evidence at face value or you
2 think you will might look at it with a
3 critical or jaundiced eye?

4 A. The evidence?

5 Q. Yes.

6 A. I'm trying to understand the question. You
7 mean would I fluff it off or just accept
8 it because they said it?

9 Q. Look at it.

10 A. Look at it. Study it.

11 Q. Would you do that in this case?

12 A. Yes.

13 Q. And by the way, whenever one of my many
14 questions doesn't make sense to you, I
15 understand that that is my fault, not
16 yours. What it means is that in my usual
17 customary fashion, I have once again
18 failed to make myself clear. I try to do
19 my best, but I get tongue tied. Excuse
20 me. You understand that they got the
21 only burden of proof in this case?

22 A. Yes.

1 Q. And you understand that Donna is on trial for
2 murder, not for being a woman of loose
3 moral character?

4 A. Yes.

5 Q. There are essential elements, there's two
6 murder charges. Purpose is an element of
7 both of those murder charges requiring
8 the State to prove that essential
9 element. You are going to require them
10 to prove it, aren't you?

11 A. Yes.

12 Q. Purpose is the same as intent. A person acts
13 purposely if its specific intention is to
14 cause a specific result. Will you look
15 at all of the facts and circumstances to
16 determine intent?

17 A. Yes.

18 Q. You understand that the Defendant doesn't have
19 to testify or present any evidence?

20 A. Yes.

21 Q. Do you have any problem with that rule?

22 A. No.

1 Q. How would you feel if she elected not to
2 testify?

3 A. It is her choice.

4 Q. How would you feel if she elected not to
5 present any evidence?

6 A. She doesn't have to.

7 Q. Now let me play lawyer and speak out of both
8 sides of my mouth. If she does testify,
9 she's a witness just like any other
10 witness, you should use the same rules or
11 standards to evaluate her testimony that
12 you used to evaluate the testimony of
13 other witnesses.

14 A. Correct.

15 Q. But let's be fair about this. She's the
16 Defendant. She's got an interest or
17 stake in the outcome of this case,
18 doesn't she?

19 A. Yes.

20 Q. And that is something you would want to keep
21 in mind in determining whether you
22 believe her?

1 A. Correct.

2 Q. If we're going to be uniform about this, if
3 you then determine that anyone else has
4 an interest or a stake in this case, you
5 would also apply that to them?

6 A. Yes.

7 Q. And the Judge will give a whole list of other
8 factors. He's also going to tell you
9 that you should use these tests of
10 truthfulness which you use in your every
11 day life. And now we can use your kids.
12 You frequently got to determine whether
13 those kids of yours or someone else's is
14 trying to be straight up with you or
15 hoodwink you, right?

16 A. Right.

17 Q. And over the years, you have developed a sixth
18 sense, intuitive method of doing so?

19 A. Yes.

20 Q. The Judge will tell you not to leave that
21 sixth sense at the Courtroom door, bring
22 it in here and apply it to each and every

1 witness that testifies. Will you do
2 that?

3 A. Yes.

4 Q. Truth beyond a reasonable doubt requires that
5 you be firmly convinced of the
6 allegations and its proof of such
7 character that you would be willing to
8 rely and act upon it in the most
9 important of your own affairs. You
10 understand that?

11 A. Right.

12 Q. Do you know that was the highest burden of
13 proof known in the Court of law?

14 A. Reasonable?

15 Q. Beyond a reasonable doubt, proof beyond a
16 reasonable doubt. That is the highest
17 burden in any Court in this country.

18 A. Okay.

19 Q. Did you know that?

20 A. I wasn't aware of it in those terms, no.

21 Q. I think Mr. Becker was talking to you about
22 containers and filling them up. And the

1 entire container would be proof beyond
2 all doubt?

3 A. Right.

4 Q. And what did he tell you that somewhere near
5 the top there is proof beyond a
6 reasonable doubt?

7 A. Right, not barely half way full, that is not
8 reasonable doubt. Close to the top.

9 Q. And how close to the top? Only you can
10 answer. You understand that?

11 A. Right.

12 Q. This juror that sits in this box may have one
13 line. Someone else will have another
14 line. Individual decisions that you have
15 to make. You make important decisions
16 all the time. Not all the time, but you
17 have made important decisions in your
18 life. Sometimes in your mind's eye or
19 even on a piece of paper you write down
20 the pros, the good things about the
21 decision on one side of a piece of paper,
22 the negatives on the other side?

1 A. Yes.

2 Q. And if you are anything like me, what you try
3 to do is you then try to strike the
4 negatives because if you can scratch all
5 of those off and you are only left with
6 the favorable factors, you are making the
7 right decision?

8 A. Right.

9 Q. And if you go through that process and you
10 strike all of these negatives, save and
11 except one, and no matter how much you
12 think about it and no matter how much you
13 investigate it, that one negative remains
14 reasonable in your mind. You cannot say
15 beyond a reasonable doubt that that
16 decision is the right thing for you?

17 A. I guess so, if I'm trying to understand what
18 you are saying.

19 Q. Am I not making myself clear again?

20 A. You are weighing one item against a stack of
21 others.

22 Q. I am, but that one negative remains a

1 reasonable negative?

2 A. Right.

3 Q. And for the sake of our discussion, whether
4 you make this decision or not, depends
5 upon whether you convince yourself beyond
6 a reasonable doubt that that decision is
7 right for you?

8 A. Right.

9 Q. If you are left with one reasonable negative,
10 you can't say to yourself beyond a
11 reasonable doubt that that decision was
12 the right thing for you?

13 A. Right.

14 Q. You may be able to say it was the right thing
15 for you, by another standard, but not by
16 proof beyond a reasonable doubt. You
17 understand that?

18 A. Yes.

19 Q. Will you hold the State to its burden of proof
20 beyond a reasonable doubt?

21 A. Yes.

22 Q. And Mr. Becker talked to you about

1 circumstantial evidence, didn't he?

2 A. Yes.

3 Q. I think about a rain storm. Instead of
4 raining, it snows. You get up on a
5 Sunday morning, you got your coffee, and
6 if you are me, you got a cigarette and a
7 cup of coffee and you want your
8 newspaper. You are upstairs, look
9 outside, there's foot tracks, footprints
10 from your neighbor's to your door, across
11 the other neighbors. You conclude that
12 your newspaper is down there and that was
13 the paperboy. It seems like a reasonable
14 inference, doesn't it?

15 A. Right.

16 Q. Until you go down and open the door, there's
17 your Giant Eagle coupons, or some bag of
18 coupons from someplace. Whenever you are
19 asked to make an inference, you have to
20 look for other equal inferences. Do you
21 see that?

22 A. Right.

1 Q. Will you do that in this case?

2 A. Yes.

3 Q. Will you make sure that every inference you
4 are asked to make is reasonable?

5 A. Yes.

6 Q. And in the long time that I have belabored up
7 here, has there been anything that has
8 popped into your mind that you would like
9 to discuss?

10 A. No.

11 MR. INGRAM: Thank you very much for
12 your time and attention.

13 (SIDE BAR DISCUSSION, OFF THE RECORD AND
14 OUT OF HEARING)

15 THE COURT: Mr. Seelbach, you are
16 going to be in the pool from which this Jury is
17 chosen. You should call that number given to you
18 after 4:30 on Friday. After we get 34 members into
19 the pool, then we'll have you all come in together
20 and we'll pick the Jury on this matter from then,
21 from that group of people.

22 I would again remind you not to discuss

1 anything about the case, not to read anything in
2 the newspaper or watch anything that might occur on
3 T.V. Thank you for your participation.

4 For the record, both Defense and
5 Prosecution have passed for cause on this last
6 prospective juror, is that correct?

7 MR. INGRAM: Correct.

8 MR. BECKER: Correct.

9 (Juror No. 54 was excused from the Courtroom.)

10 THE COURT: I would suggest, rather
11 than us starting, that we break early and come back
12 early. Be back at 12:45.

13 (Court in recess at 11:35 a.m.)

14 (Resumed in Open Court at 1:10 p.m.)

15 Juror No. 55, Diane Parke, entered the Courtroom.)

16 THE COURT: You read the handout.

17 MS. PARKE: Yes.

18 THE COURT: You will be asked
19 questions this afternoon concerning two different
20 areas. One is whether or not you have read about
21 this case prior to today and you will not be
22 unusual if that is the case. Many of the people

1 who read something about the matter, a case of this
2 nature always generates a lot of interest in the
3 media. The question is whether or not you will be
4 able to set aside anything that you have heard and
5 not allow that to interfere with the evidence.

6 Each juror will have to decide this
7 matter on the evidence presented in this Courtroom,
8 and the law that is given to the Jury for
9 instructions.

10 The second area of inquiry will be
11 regarding the question of the death penalty itself.
12 That question may never come up in this case. If
13 the Jury, after listening to the evidence find that
14 the State has failed to prove beyond a reasonable
15 doubt each and every element of the various things
16 contained in the indictment, then they may well
17 return a verdict of not guilty. And that would be
18 the end of the trial.

19 If, however, the State should carry the
20 burden of proof, then if they return a verdict of
21 guilty, this case would go into a second phase, and
22 at that time, the Jury would be called upon to

1 listen to further evidence presented by the
2 Prosecution, and that is what we refer to as the
3 aggravating circumstances. That merely means the
4 State would give you reasons why the Prosecution
5 feels that this Jury should consider and impose the
6 death penalty.

7 Now the Defense, at that same second
8 phase has an opportunity to present mitigating
9 factors. And those are reasons why, reasons that
10 the Jury should consider in favor of not imposing
11 the death penalty. The burden is always on the
12 Prosecution to prove their case beyond a reasonable
13 doubt. Even if the Prosecution presented no
14 evidence, the State still has to present evidence
15 to show you the reason why that should be
16 considered.

17 Now the Jury has at that point, to weigh
18 those two factors, the aggravating circumstances
19 against the mitigating factors. And if they would
20 reject the death penalty, they have three other
21 possible recommendations that can be made. One,
22 being life without chance of parole or life without

1 chance of parole before 25 years or 30 years. Some
2 of the prospective jurors are of the mind that they
3 could never find themselves in a position, can't
4 visualize themselves in a position where they would
5 have to make a decision of deciding whether or not
6 to impose the death penalty. That is fine. There
7 are others who feel very strongly that a person who
8 takes a life should forfeit their life, and that is
9 fine also.

10 But neither one of those people on the
11 extreme positions, could serve on a Jury because
12 they have to be unfair with one side or the other.
13 So what these folks are looking for are jurors who
14 are going to have their own opinion on the death
15 penalty. That is only natural.

16 But each person of the 12 has to be of
17 such a mind that they can set aside and not allow
18 their personal belief to interfere with doing the
19 job that each of these jurors are going to have to
20 do, and that is to follow the law.

21 Now in Ohio, a person who commits murder,
22 does not automatically get the death penalty. But

1 a person who commits murder with certain
2 aggravating circumstances, under our law, then the
3 Jury has to consider the possibility of imposing
4 death, if the State proves each of those elements
5 leading to that particular conclusion.

6 EXAMINATION BY MR. BAILEY OF MS. PARKE:

7 Q. Good afternoon, Miss Parke. My name is Ken
8 Bailey, I'm an Assistant Prosecutor with
9 the Trumbull County Prosecutor's Office,
10 and as I promised last week, my
11 co-counsel, Chris Becker is here with us
12 today. And the two of us are going to be
13 representing the people of the State of
14 Ohio and Trumbull County in prosecuting
15 this particular case.

16 Now, this is the one chance that we
17 get during the course of the proceedings
18 to talk to you face to face, and if you
19 have any questions that arise during this
20 time, feel free to ask as long as it
21 pertains to the proceedings. We'll see
22 if we can get an answer for you.

1 This question and answer process,
2 Jury selection, we ask you questions as I
3 said, about your prior experiences, your
4 background and the opinions you hold. We
5 do not because we're snoop and prying
6 into people's background, but rather we
7 want to make sure that the folks that sit
8 on this Jury can be fair to both sides,
9 both the Defendant and the people of the
10 State of Ohio. That is why we ask these
11 particular questions.

12 It may well be that some folks have
13 something, some opinion they hold or
14 something in their background that
15 affects their ability to sit on one
16 particular type of case. They would be
17 fine jurors in all of the other cases,
18 but in one particular case, as we go
19 through the questioning, something might
20 crop up. Probably won't, but you never
21 can tell.

22 Now, there aren't any right answers,

1 there aren't any wrong answers to these
2 questions. Only open, candid answers,
3 and another thing I want to bring out is
4 that because of the nature of our rules
5 of conduct, we're not allowed to have any
6 contact with you after we're done talking
7 to you here today until this case is all
8 over, and it may be two different phases
9 in this trial, assuming we get to a
10 second phase. We can't talk to you in
11 between the phases, either. So, if we
12 run into each other outside in the
13 hallway on the stairway, elevator, at a
14 restaurant or something, and we don't
15 talk to you, that is not that we're
16 trying to snub you and be antisocial, it
17 is that we're not allowed to have any
18 communication with you or it could result
19 in a mistrial. We want you to know that.
20 If you have questions that come up, you
21 can ask them to the bailiff who will be
22 here a little bit later, or our Court

1 Reporter, Mary Ann, or you can ask the
2 Judge. But the attorneys, we're just not
3 allowed to have any contact with you.

4 I take it you had a chance to read
5 through that handout that was prepared
6 for the jurors downstairs, right?

7 A. Yes, Sir.

8 Q. And did you understand all of that or was it
9 clear as mud?

10 A. I wouldn't say it was clear as mud, but it was
11 pretty understandable.

12 Q. You haven't served on a Jury before, so this
13 is kind of a new experience for you.
14 Now, the Defendant here is charged with a
15 number of crimes. The charges are two
16 counts of aggravated murder. There's
17 only one dead body, but there are two
18 different theories of the killing, and
19 the State is allowed to pursue two
20 different theories, and we have elected
21 to do that.

22 So, we're proceeding on two separate

1 theories; one of these is aggravated
2 murder with prior calculation and design,
3 and the other is what we call aggravated
4 murder, felony murder, that the
5 purposeful killing occurred in the course
6 of another specific felony. In this
7 case, an aggravated burglary and/or
8 aggravated robbery. Attached to these
9 charges of aggravated murder are what we
10 call specifications of aggravating
11 circumstances. This word that we use
12 "specification" is just a fancy term that
13 means a special finding of fact for a
14 Jury to consider. An extra fact for you
15 to look at. And those specifications
16 deal with -- first, there's an
17 aggravating circumstance of aggravated
18 burglary. That the aggravated murder was
19 committed during the course of an
20 aggravated burglary and the Defendant
21 committed the aggravated murder with
22 prior calculation and design. And the

1 second specification that is attached to
2 the two counts of aggravated murder, is
3 that the aggravated murder was committed
4 during the course of an aggravated
5 robbery, and the Defendant committed the
6 aggravated murder with prior calculation
7 and design. So, we have two counts of
8 aggravated murder with the
9 specifications, and there are two
10 additional counts with which she's
11 charged. Those charges are aggravated
12 burglary and aggravated robbery. And
13 attached to those are firearms
14 specifications, or special finding of
15 fact, that a working gun was used. And
16 you hear the term aggravated burglary and
17 aggravated robbery. Sometimes folks get
18 confused by those terms, and they use
19 them interchangeably sometimes in every
20 day life. But in the law, the Judge is
21 going to define those terms for you.
22 They have a specific legal meaning. But

1 basically the difference is, an
2 aggravated burglary usually involves
3 trespass into an occupied structure, like
4 a house, somebody's home. And somebody
5 goes in with the purpose to commit some
6 type of offense. It could be an
7 aggravated murder. It could be a theft.
8 And the person could be armed with a
9 weapon, and somebody could be seriously
10 hurt. And in an aggravated robbery, as
11 opposed to the aggravated burglary, you
12 don't have to go into a structure. It is
13 just taking property, usually by force or
14 by threat, and the perpetrator can be
15 armed with a weapon and can hurt the
16 victim in that particular case. So,
17 there's the two charges of aggravated
18 burglary and aggravated robbery.

19 Now, each of these crimes is
20 composed of certain elements, or
21 essential component parts of a crime. I
22 take it, you have probably baked over the

1435

1 years, right?

2 | A. Yes.

3 Q. I would imagine. And probably for your
4 children, right?

5 | A. Right.

6	0.	Ever bake cakes?
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7 | A. Yes.

8	Q. What is your favorite?
---	---------------------------

9 A. Harvey Wall Banger cake. It burns out the
10 alcohol.

11 Q. It has bananas in it?

12	A. No. Orange juice, eggs, vodka, wine.
----	---

13 Q. I kind of like chocolate cake.

14 A. I like chocolate cake, too.

15 Q. That recipe has certain key ingredients that
16 you put in that you just mentioned, along
17 with the sugar and the eggs and milk or
18 whatever, and baking powder, baking soda,
19 one of the two. I get those confused.
20 And you need those key ingredients. If
21 you were to bake that and you left out
22 the orange juice, you would have a cake,

1 but it wouldn't be the Harvey Wall
2 Banger, would it?

3 A. No.

4 Q. It would be a different cake. I don't know
5 what it would taste like, but it would be
6 a different cake. The same thing with
7 crime. Each of these crimes have certain
8 key ingredients and we have got to mix
9 the right ingredients up and put them all
10 in there, so that you are convinced of
11 the truth of the charge, of each of these
12 elements of the crime by proof beyond a
13 reasonable doubt. And if we do, then we
14 bake that cake and we have got to bake
15 four different cakes here and we have got
16 to bake these specifications.

17 Now, if we don't meet our burden of
18 proof, and the burden of proof is always
19 on us, the people of the State, to prove
20 these particular elements. Then, if we
21 don't do that, then of course, you would
22 have to find the Defendant not guilty of

1 that particular crime. And if we were to
2 convince you by -- when the Judge will
3 instruct you as proof beyond a reasonable
4 doubt, then you would be able to return a
5 conviction on that particular charge,
6 right?

7 Now, let me give a for instance of
8 what these elements are. The Judge is
9 going to instruct you as to the elements
10 at the end of this case and you are bound
11 to follow his instructions, but this is
12 just a for instance. Let's take the
13 crime of aggravated murder with prior
14 calculation and design. Let's say the
15 first element would be that it happened
16 on or about a certain date, like December
17 11, 2001. The second element would be
18 that it happened in Trumbull County,
19 Ohio, and we need to prove that, so that
20 we can try the case in this Courthouse
21 rather than down in Cuyahoga County.

22 The third element is identification,

1 that the person who committed these
2 crimes is the person who is sitting here
3 at that table, somebody is going to have
4 to point her out. Otherwise, we would be
5 missing that element. The fourth element
6 would be that she acted purposely,
7 basically on purpose. But the Judge will
8 give a detailed definition. The fifth
9 element is that she caused the death of a
10 living person by the name of Robert
11 Fingerhut. And the sixth element would
12 be that she acted with prior calculation
13 and design. We would have to prove all
14 of those particular elements. Now, the
15 Defendant, the charges here are not that
16 she's the trigger person. The charge
17 here, the trigger person is a fellow by
18 the name of Nate Jackson. And the
19 Defendant is charged as a complicitor,
20 somebody who solicits or procures another
21 person, or aids and abets another person
22 in committing the crime. In other words,

1 plans with them, strengthens them,
2 encourages them, helps them in some way
3 to commit these particular crimes. You
4 understand that? Does that bother you,
5 that she's charged not as the trigger
6 person, but rather as the complicitor or
7 aider and abettor?

8 A. No.

9 Q. Now, let me get to this, some other issues
10 first. The issue of pre-trial publicity
11 comes up. And you indicated I believe,
12 you will watch the Cleveland news
13 channels. You don't keep up on the local
14 news?

15 A. No.

16 Q. So this case, there's nothing about this case
17 that rings a bell?

18 A. No.

19 Q. The charge here, this complicity charge is
20 basically that she planned with this
21 fellow, Nate Jackson, to kill her
22 ex-husband, Robert Fingerhut, to get

1 insurance money and to steal the car.
2 And the killing and the stealing of the
3 car and the trespassing of the house were
4 actually done by this Nate Jackson. That
5 is what the gist of the charge is.

6 Now, as you -- you haven't heard
7 anything about this case that you
8 recollect? It may well be as we go
9 through the course of the trial, you may
10 think back and say, "You know, I did see
11 a headline or something like that or
12 heard something on the news in the past."
13 But we're going to ask you to set that
14 aside and make your determination based
15 on what happens only in this Courtroom.
16 And there's reason for it.

17 As we look around the Courtroom,
18 there's nobody here from the news media.
19 There may well be as the trial starts,
20 we'll see some of the reporters from the
21 newspapers or some of the T.V. people
22 come in, and they are not allowed to

1 photograph the jurors. If they ever
2 photograph jurors, they photograph feet
3 or shoes. But generally, they are here
4 for a couple of minutes, two or three
5 minutes, maybe five minutes, and then
6 they are back out. And they try to do a
7 feature on the trial based on their two
8 or three minutes. Now you know that if
9 they are only here for a couple of
10 minutes, they are going to miss all of
11 the questions and answers that were asked
12 and given before they got in, and after
13 they left the Courtroom. So whatever is
14 in the paper may be totally distorted.
15 It may distort what happened that
16 particular day, because of the impression
17 they get just from picking up a little
18 bit of something out of the context. It
19 is the nature of their business to rush
20 into print. It wouldn't be fair to make
21 a decision based on what is in the news.
22 That is why the Judge tells the jurors

1 that you can't read the papers or watch
2 T.V. about this case during the course of
3 the trial. You can have somebody save
4 the papers for you and read it afterward,
5 which might be an interesting experience,
6 because you will probably say, "I sat in
7 the Judge's Courtroom during the course
8 of the trial, and I remember the
9 testimony and the evidence, what
10 happened, and reading these papers, it is
11 like they were sitting in Judge McKay's
12 Court on another trial." That could well
13 happen.

14 Now, there's another issue that
15 we're going to talk about here. I
16 mention the burden of proof and the
17 elements of the crimes and the
18 specification is on the State, and that
19 burden never changes, it is always on us.
20 The Defendant doesn't have any burden of
21 proof. The Defense can sit there during
22 the course of the trial, they can sit on

1 their hands. They won't do that,
2 probably, but they don't have to do
3 anything. The burden is entirely on us.

4 The Judge explained that this case
5 will be tried in two different parts. It
6 is like two separate trials. The first
7 parts deals with the issue of guilt or
8 non-guilt. Can we prove what these
9 crimes that the Defendant is charged
10 with, by proof beyond a reasonable doubt?
11 If we do, and you and the other jurors
12 return a verdict finding the Defendant
13 guilty of the crime called aggravated
14 murder, and one or more of these
15 specifications, then we would move on to
16 the second phase, because that would make
17 the Defendant eligible for the death
18 penalty as a possible punishment.

19 If we don't prove one of these
20 specifications, at least one of these
21 specifications and the crime of
22 aggravated murder, then we don't go on to

1 a second phase. It would be the end of
2 it, basically. But if we do, you
3 understand that the death penalty is not
4 an automatic punishment for somebody
5 convicted of aggravated murder with
6 specifications?

7 A. Yes.

8 Q. And the reason for that is that in the first
9 phase, because we're putting on evidence
10 that goes to prove elements of the crime,
11 the issue is guilt or non-guilt of a
12 Defendant. And we wouldn't have any
13 evidence as to what would be the
14 appropriate punishment for a person
15 convicted of that crime. You wouldn't
16 have heard anything that would work to
17 the favor of the Defendant, so it
18 wouldn't be fair to automatically impose
19 the death penalty sentence. Right?

20 A. Right.

21 Q. Now, in the second phase, the issue is
22 different, the issue is what is the

1 appropriate punishment. And you may hear
2 some of the same evidence over again.
3 You may hear new evidence and you would
4 have to do a balancing test. On one
5 hand, you would have the aggravating
6 circumstance or circumstances, and on the
7 other hand you have what would be called
8 mitigating factors that could be produced
9 on behalf of the Defendant. And I can't
10 give a for instance of that right now,
11 because I don't know what would really
12 apply. But the Defense would have an
13 opportunity to present these things, and
14 it may well be that there would be a lot
15 of mitigating factors, we don't know, but
16 you would have to consider those.

17 Now, the issue of how much weight
18 you want to give to these things, the
19 aggravating circumstance or
20 circumstances, and how much weight to
21 give to these mitigating factors, that is
22 entirely up to you and the other jurors.

1 You might decide that they have a whole
2 lot of weight, or you may decide they are
3 have as much weight as a feather. That
4 is entirely up to you.

5 Now, if you and the other jurors
6 find that the aggravating circumstance or
7 circumstances outweigh these mitigating
8 factors beyond a reasonable doubt, then
9 you must return a verdict as to the death
10 penalty. You understand that?

11 A. Yes.

12 Q. It is not automatic, but if you do that
13 balancing test and find that we proved
14 beyond a reasonable doubt that the
15 aggravating circumstance outweighs the
16 mitigating factors, then you must
17 recommend the death penalty.

18 A. Okay.

19 Q. If we fail to live up to that burden of proof,
20 if we don't convince you beyond a
21 reasonable doubt that the aggravating
22 circumstance or circumstances outweigh

1 the mitigating factors, then you must go
2 on to consider the three other life
3 punishments. The life without parole
4 eligibility, life with parole eligibility
5 after 30 full years, and life with parole
6 eligibility after 25 full years. And
7 then it is up to you and the other jurors
8 to decide which is appropriate. You
9 wouldn't have any problem with that?

10 A. No.

11 Q. Now, you indicated you believe in the death
12 penalty for murder and other heinous
13 crimes, right?

14 A. Right.

15 Q. And how long have you held this belief?

16 A. Ten, 15 years.

17 Q. And before that, did you believe in the death
18 penalty as a punishment?

19 A. I didn't think about it when I was younger,
20 really young.

21 Q. Was there something ten or 15 years ago that
22 occurred where you thought, "Gosh, we

1 really should have a death penalty"?

2 A. These people that commit vicious, unspeakable
3 crimes, that is the way I feel.

4 Q. And that belief in favor of the death penalty,
5 has it stayed the same or gotten stronger
6 or weaker over the last 15 years?

7 A. I would say about the same on that issue.

8 Q. Now, you understand that and I notice you felt
9 that repeat offenders are a problem in
10 the criminal justice system today?

11 A. Yes, I do.

12 Q. Why is that?

13 A. Because you do read about people that get out
14 and commit crimes again of the same type
15 after a period of years.

16 Q. Now, because you favor the death penalty for
17 certain bad crimes, vicious crimes, you
18 wouldn't automatically come back with a
19 death penalty verdict in this case,
20 right?

21 A. No.

22 Q. If you found her guilty?

1 A. Not necessarily, no.

2 Q. I mean you would have to hear things that are
3 in her favor before you would be in a
4 position to be able to make a decision as
5 to what the right punishment is?

6 A. Right.

7 MR. INGRAM: Objection.

8 THE COURT: What do you object to?

9 MR. INGRAM: The statement that the
10 juror would have to hear things about the
11 Defendant's life. She would be required to --

12 MR. BAILEY: Let me rephrase that.
13 I'll withdraw that question.

14 THE COURT: Rephrase it.

15 Q. Before you would agree that -- before you
16 could make a decision as to what the
17 appropriate penalty is, you would have to
18 determine whether -- you would have to
19 determine whether the State met its
20 burden of proving that the aggravating
21 circumstance or circumstances outweigh
22 any mitigating factors?

1 A. Yes.

2 Q. And --

3 THE COURT: It is a point that is a
4 very important point. The Defense does not have to
5 do anything throughout the trial if they don't wish
6 to. That is the point. The burden is always on
7 the State to prove all evidence on each point. In
8 that second phase, if we got to that point, the
9 Defense would have the opportunity to present
10 evidence, but the burden, if they don't do
11 anything, the burden is still on the State to prove
12 the aggravating circumstances outweigh any
13 mitigating factors.

14 MS. PARKE: I understand.

15 Q. (By Mr. Bailey) We talk about this standard
16 of proof beyond a reasonable doubt. The
17 Judge is going to define that term for
18 you at the end of the case. Basically,
19 when we talk about reasonable doubt,
20 we're talking about using your reason and
21 your common sense and you have done that
22 raising a family and you have done that

1 in your every day life, you use reason
2 and common sense?

3 A. Yes.

4 Q. And so it is not a strange test for you. You
5 have got to be firmly convinced of the
6 truth of the charge, to what we call a
7 moral certainty, using your reason and
8 your common sense. And it is sort of
9 like having a box, and you have to fill
10 it up. We have to fill it up with enough
11 things that it would be certainly be more
12 than halfway, it would be pretty close to
13 the top, but you understand it doesn't
14 have to be all the way to the top of this
15 box. We would have to put enough
16 evidence in there to convince you of the
17 truth of the charge.

18 A. Right.

19 Q. And sometimes people watch T.V., they read
20 books and watch movies and they use
21 Hollywood terms like proof beyond all
22 doubt or beyond a shadow of a doubt.

1 There's an Alfred Hitchcock movie called
2 "Shadow of a Doubt," but in real life,
3 there's no such animal in the criminal
4 justice system as proof beyond a
5 reasonable doubt. Would you be able to
6 follow the Judge's instructions on that?

7 A. Yes.

8 Q. You wouldn't make us fill that box up all the
9 way to the top, it is not 100 percent
10 proof. So that you are firmly convinced
11 of the truth of the charge using your
12 reason and your common sense?

13 A. Yes.

14 Q. There are different types of evidence that we
15 can use to prove our case. Sometimes we
16 can use what is called direct evidence
17 where a witness learns something through
18 the use of his or her five senses, and
19 can testify to something like, "Well, I
20 heard the gunshot and it was loud. I
21 smelled the smoke and it was acrid. I
22 touched the body and it was cold." That

1 is direct evidence.

2 But there's another type of evidence
3 that we can use. It is just as good as
4 direct evidence. And it is sort of round
5 about evidence where you are given a fact
6 or a set of facts, and you are asked to
7 draw a logical conclusion to another fact
8 or set of facts. We call that
9 circumstantial evidence. For example,
10 let's say you go to bed at night, you
11 live in a two story house. You look out
12 across your neighborhood that night and
13 it is a beautiful night out. The moon is
14 beaming, the stars are twinkling, not a
15 cloud in the sky. And you draw the
16 blinds, you get into bed, you have the
17 radio on and you hear the weather
18 forecaster say, "There's a cold front
19 coming in, we're going to get a storm
20 overnight." And you turn off the radio
21 and you go to sleep. Sometime in the
22 middle of the night, you are suddenly

1 awakened. You look toward the window,
2 but the blinds are drawn, but you can see
3 a flash of light coming from outside and
4 suddenly there's a distant booming sound.
5 And then a few seconds later, there's
6 another flash of light outside and you
7 hear another closer in time, booming
8 sound, and then there's a really bright
9 flash of light outside and a great big
10 ripping boom above the house and pitter
11 patter on the roof and heavy drumming
12 sounds. You fall back asleep and
13 sometime later, you wake up. You open
14 the blinds, you look out and it is a
15 beautiful day, not a cloud in the sky.
16 The sun is shining and the birds are
17 singing, but the streets are running with
18 water, the rooftops are wet across the
19 way. Drops of water are dripping down
20 the leaves of the trees and it is flooded
21 outside and there's no fire hydrant
22 nearby where any car could hit it and

1 knock water all over the house. As far
2 as you can see, it is wet outside. You
3 know what happened during the night,
4 don't you?

5 A. It stormed.

6 Q. Thunder storm. You know that beyond any
7 reasonable doubt, right? You didn't see
8 it from your own identification but based
9 upon all of the other facts and
10 circumstances that were presented, you
11 were able to make that determination and
12 you did that beyond a reasonable doubt,
13 right?

14 A. Right.

15 Q. Now there's room in there for some possible or
16 hypothetical or imaginary doubt. You can
17 imagine that E.T. flew by in his flying
18 saucer and sprinkled some stuff and put
19 on a light show, but that would be a
20 foolish or imaginary doubt, wouldn't it?

21 A. Yes.

22 Q. Now, there's a reason for us using

1 circumstantial evidence. The law allows
2 it. Because sometimes when you are
3 dealing with criminal law, you are
4 dealing with serious crimes, you can
5 imagine that when people plan serious
6 crimes, they often times do that in
7 secret without a whole lot of witnesses
8 around, right?

9 A. Right.

10 Q. Usually, they don't step outside on the
11 Courthouse steps and say, "Hey,
12 everybody, we're going to pull a bank
13 robbery or kill so and so." And you can
14 rely on circumstantial evidence, for
15 example, like letters or phone calls if
16 we were to get something like that, that
17 would show what the Defendant was
18 thinking at the time of the crime. You
19 would be able to consider things like
20 that, right?

21 A. Right.

22 Q. And I think you would agree that sometimes

1 criminals may not be the brightest people
2 in the world. Criminals may be silly or
3 sometimes stupid. For example, you
4 probably are aware of cases over the
5 years where you have read or seen on T.V.
6 or radio, something about the burglar who
7 breaks into a house and leaves his wallet
8 behind, or the armed robber who goes into
9 the bank and hands the teller a stick up
10 note on the back of an envelope and after
11 he leaves, there's his address and name
12 on the envelope. You are aware of things
13 like that over time?

14 A. I suppose that could happen.

15 Q. Now, one of the key concepts in our American
16 system of justice is the presumption of
17 innocence. And you understand that this
18 Defendant, as she sits there, is presumed
19 to be innocent as are all other
20 Defendants tried in this Courtroom. And
21 that presumption of innocence acts like a
22 cloak, shielding her all through the

1 course of this trial and that stays with
2 her all the way through the trial, up
3 until the time you go back in that Jury
4 room to deliberate with the other jurors.
5 And then if you decide that we presented
6 enough evidence to convince you beyond a
7 reasonable doubt of the elements of the
8 crimes charged, then that presumption of
9 innocence would be gone.

10 A. Right.

11 Q. Now, if the State were to prove to you and the
12 other jurors that the aggravating --
13 let's say we prove her guilty in the
14 first phase to your satisfaction, so that
15 you are firmly convinced that she
16 committed the crime charged by proof
17 beyond a reasonable doubt. We proved the
18 elements. And one thing about that,
19 about proving the elements, we're
20 lawyers. And we're sort of geared toward
21 asking questions that prove elements.

22 Jurors being laymen, aren't geared

1 toward elements so much. You may have
2 other questions that may arise, but you
3 are sort of stuck with the questions that
4 the lawyers ask. It may well be that you
5 have some special interest. Like my
6 wife. My life loves shoes, she has 50
7 trillion pairs of shoes and if you had an
8 interest in say footwear, what kind of
9 shoes people were wearing at the time.
10 It wouldn't have any bearing on proving
11 the elements of the crime. That type of
12 question might never get asked. You
13 understand that?

14 A. Yes.

15 Q. And you would never get an answer to it in the
16 course of the trial, and if it had no
17 bearing on the case, you would still be
18 able to return a verdict in the case
19 based on the evidence, without ever
20 getting an answer to some questions like
21 that. Right?

22 A. Right.

1 Q. Now, another thing about that is you can't go
2 out to the scene on your own to
3 investigate. We have had a juror who did
4 that in one case and it caused a
5 mistrial. You wouldn't want to do that
6 and you can't take notes during the
7 course of the trial. Sometimes on Court
8 T.V., they have some jurisdictions where
9 the Court may allow the taking of notes.
10 In Ohio, generally the Courts don't allow
11 the taking of notes. They are concerned
12 that it would take away from your being
13 able to concentrate on the witnesses and
14 the witnesses' demeanor at the time and
15 they want you to pay close attention to
16 what the witness says and how he says it
17 or she says it. You would be able to do
18 that?

19 A. Yes.

20 Q. And you would be able to, I take it, you
21 remember radio programs, maybe when you
22 were a kid, you ever listen to soap

1 operas or dramas on radio?

2 A. To tell you honestly, no. I am right -- no, I
3 never listened to radio programs.

4 Q. You are too young?

5 A. Yes.

6 Q. But it is important that you pay very close
7 attention to the testimony, because Mary
8 Ann is a very good Court Reporter, but we
9 don't have the million dollars worth of
10 equipment to do instant transcripts like
11 they did in O.J. Simpson or some other
12 trials and there aren't going to be any
13 transcripts of the testimony. Jurors
14 sometimes ask the question, "Can we get
15 the testimony of so and so," and the
16 Judge tells them no, you have got to rely
17 on your collective recollection. It is
18 important that you and other jurors pay
19 very close attention to the testimony,
20 because there aren't going to be any
21 instant replays like on T.V. or any
22 transcripts. Can you do that? Sort of

1 like going back to school and remembering
2 things, going back as a nurse?

3 A. I am looking straight at you and remembering
4 what you are saying to me now.

5 Q. If we're able to convince you and the other
6 jurors beyond a reasonable doubt that the
7 Defendant is guilty as charged of the
8 crimes of which she's charged, would you
9 be able to sign a verdict finding her
10 guilty in the first phase?

11 A. Yes.

12 Q. And let's say we get onto a second phase where
13 the issue is punishment and we convince
14 you and the other jurors beyond a
15 reasonable doubt, that the aggravating
16 circumstance or circumstances outweigh
17 these mitigating factors, would you be
18 able to sign a verdict in favor of the
19 death penalty? And the reason I ask that
20 is it is not an easy thing that we ask
21 folks to do. Most trials don't involve
22 the Jury getting involved in any

1 punishment. But this type of a case
2 does, and it is a very difficult thing
3 that we ask people to do, and it should
4 be difficult. The death penalty should
5 only be imposed in rare cases, not in
6 every case.

7 The legislature sets down the
8 parameters for these types of cases. Not
9 all murders have the death penalty as an
10 option, only certain murders, so we ask
11 you to search your mind, search your
12 heart, and to see if you can actually do
13 that, because let's say we go through a
14 couple of weeks of trial, and then we got
15 into a second phase and we go through a
16 day or two or three of the mitigation
17 phase, and we get right down to it and
18 you are in there with the other jurors,
19 and you say, you know, "Gosh, I have gone
20 through this whole trial. I told them I
21 could be fair and impartial at the
22 beginning, but when it comes right down

1 to it, I'm a nurse by profession and I am
2 used to saving lives for my whole career
3 and now they are asking me to return the
4 death as a punishment and I found the
5 State has met its burden of proof, they
6 have proved that is the appropriate
7 penalty because the aggravating
8 circumstance outweighs the mitigating
9 factors. When it comes right down to it,
10 I just can't do it." Then the State
11 wouldn't get a fair shake. That is why
12 we ask that question.

13 A. Honestly, I don't know whether I could or not.
14 I don't think I could.

15 Q. You don't think, why is that?

16 A. It would depend on the crime and the severity
17 of it and the proof of it.

18 Q. Let's say we convinced you -- let's say we
19 convinced you that she's guilty of the
20 crime. And then we get into a second
21 phase and you hear, you do this weighing
22 process about the aggravating

1 circumstance or circumstances against
2 whatever mitigating factors there are,
3 and you determine that we have met our
4 burden of proof, that the aggravating
5 circumstance outweighs the mitigating
6 factors, and that under the law given to
7 you by Judge Stuard, that you have to
8 recommend the death penalty, because it
9 would be the right punishment under those
10 circumstances. Would you, when it comes
11 down to it, would you be able to sign
12 that form?

13 A. I don't think so. I'll honestly say that. I
14 don't think so when it came right down to
15 it.

16 Q. Fair enough. Because you are the only one who
17 really knows. And it is important that
18 both sides get a fair shake. If we had
19 somebody up there who said, "I am such a
20 strong believer in the death penalty for
21 the crime of murder, an eye for an eye
22 and tooth for a tooth, when it comes

1 right down to it, I couldn't give the
2 Defendant a fair shake. I couldn't
3 consider the mitigating factors, because
4 I would always come back with an
5 automatic death penalty." It wouldn't be
6 fair to the Defendant, and it is
7 important to find out before somebody
8 gets seated on the Jury.

9 The same thing is true with the
10 State. The State is entitled to have
11 jurors who would be able to consider
12 everything. So, you are the only one
13 that would know that.

14 A. Right.

15 Q. You say you don't think you can do it? It is
16 based on what?

17 A. It would be specifically the crime, I think.

18 Q. I mean based -- why don't you think you could
19 do it? Is it based on religious beliefs
20 or moral or ethical belief or because you
21 are a nurse and it just goes against your
22 grain?

1 A. Probably religious.

2 Q. You are Protestant, right?

3 A. Right.

4 Q. Is there anything in your religion that
5 prohibits imposing the death penalty?

6 A. God says that you should not judge other
7 people in their life sentence. I can't
8 exactly explain, but I'm saying, when it
9 comes right down to it, I probably
10 couldn't do it.

11 Q. And it is based on religious belief?

12 A. Yes.

13 Q. You are entitled to that belief, and if you
14 can't do that in this type of case, fair
15 enough. Because you are entitled to hold
16 that opinion. Nobody can force you to
17 sign a death penalty verdict and nobody
18 can force you to sit on this type of
19 case. It wouldn't be fair to the State.
20 We have had jurors who believe in the
21 death penalty as a punishment, but they
22 told us they can't be the people who

1 actually go and sit on that Jury and make
2 that decision. You think that this would
3 then substantially --

4 MR. INGRAM: Excuse me, Mr. Bailey.

5 (OFF THE RECORD)

6 MR. BAILEY: Thank you very much.

7 EXAMINATION BY MR. INGRAM OF MS. PARKE:

8 Q. When you told Mr. Bailey you didn't know if
9 you could personally sign a verdict of
10 death if you ever had to?

11 A. Right.

12 Q. That was an honest answer?

13 A. That was an honest answer.

14 MR. INGRAM: Thank you. No further
15 questions.

16 THE COURT: Any objection to the
17 Court dismissing for cause?

18 MR. BAILEY: No.

19 MR. INGRAM: No, Your Honor.

20 THE COURT: Ma'am, you have done
21 everything we have asked you to do. We thank you,
22 and you are excused from any further participation.

1 (Juror No. 55 excused from the Courtroom.)

2 MR. INGRAM: Before we bring in the
3 next juror, I do have a request. I can tell by
4 reading Mr. Omalley's questionnaire that Mr. Bailey
5 will consider Mr. Omalley a fine juror and will do
6 everything that he can to get Mr. Omalley to sit.
7 However, in response to question number 52, which
8 is hardship, Mr. Omalley sets forth a whole litany
9 of reasons that he has to attend to his business.
10 And he says that if he were to serve he would have
11 to start at four or five in the morning and that is
12 just to cover his one job, and that wouldn't cover
13 his second job, which is his own business.
14 Further, if we have to, I would request that in
15 your introductory questions, you ask Mr. Omalley,
16 and I really don't think you are going to have to
17 go there, because I think he wants off for business
18 reasons, but I think you should ask Mr. Omalley if
19 his views on the death penalty would prevent or
20 substantially impair him from considering the life
21 sentencing options if he ever had to.

22 THE COURT: Ask him that his

1 views --

2 MR. INGRAM: If his views on the
3 death penalty would substantially impair his
4 ability to fairly consider the life sentencing
5 options.

6 MR. BAILEY: If he's not going to be
7 able to get any sleep, we would hate to put him in
8 that position, so I think if he's got a good excuse
9 there, we wouldn't have any problem excusing him.

10 (OFF THE RECORD)

11 (Juror No. 58, Gary Omalley, entered the Courtroom.)

12 THE COURT: Good afternoon, Gary.

13 MR. OMALLEY: Good afternoon.

14 THE COURT: You read that handout
15 that was given to you?

16 MR. OMALLEY: Yes.

17 THE COURT: The purpose of having
18 each of you here today is to ask questions along
19 two particular lines. But before we start on that,
20 everyone has noticed that you look like you are a
21 busy man. Would you explain to us your work
22 situation, your business situation? Is that

1 something that would make it difficult for you to
2 sit on this case?

3 MR. OMALLEY: It certainly will. At
4 least at this point, because we're applying for
5 grants down at the housing authority and naturally
6 that grant money is very important, and there's
7 time dead lines as well as spending dead lines.

8 THE COURT: You work two different
9 places or have a business and you work someplace
10 else?

11 MR. OMALLEY: I have a bowling pro
12 shop that is open in the evenings.

13 THE COURT: We don't wish to have,
14 to place a burden on anyone time wise that it is
15 possible to avoid. And the underlying reason is, I
16 guess that this is, as you know, a very important
17 thing to both the State and to the Defense, and you
18 have to have somebody that is able to give their
19 full attention to it. We have had situations in
20 the past, where someone is working afternoon turn
21 or midnight turn and they show up, and it is pretty
22 hard to stay awake, and that is understandable.

1 So, you tell us, we don't know what your capacity
2 is, what your wishes are, if you feel that it would
3 be difficult to give your full attention, because
4 of these other matters, you should tell us about
5 that.

6 MR. OMALLEY: I really at least at
7 this point, I feel if it was different months of
8 the year where the applications and the other
9 contracts were not finishing up and other ones
10 going out. There's nobody sitting behind me at
11 work that is going to be able to accomplish these
12 job assignments. Being that we're dealing with
13 federal dollars out here, I believe it is important
14 to the housing authority that I am there and acting
15 accordingly and keeping with the regulations.

16 THE COURT: This will affect your
17 personal life at this point, is that what you are
18 saying?

19 MR. OMALLEY: Yes.

20 MR. BAILEY: We have no objection to
21 having him excused due to hardship.

22 MR. INGRAM: No questions. No

1 objection.

2 THE COURT: You are excused then
3 from any further participation. We wish you good
4 luck with your business.

5 (Juror No. 58 excused from the Courtroom.)

6 (Juror No. 59, Thomas Carmichael, entered the
7 Courtroom.)

8 THE COURT: Good afternoon. You
9 read the handout that was given to you.

10 MR. CARMICHAEL: Yes, I did.

11 THE COURT: The purpose of the
12 questioning today is to delve in two areas to find
13 out what your beliefs or your opinions are.
14 Whatever you believe is fine. No right or wrong
15 answer. Whatever your opinions are, everyone here
16 will respect them.

17 First issue will be concerning your
18 exposure, if any, to any pre-trial publicity that
19 may have occurred. This case, being a murder case,
20 generated a certain amount of publicity, which is
21 not uncommon. The question that will be asked of
22 you is whether you know anything about the case

1 from reading in the paper, or watching something on
2 T.V., and if so, whether you formed any fixed
3 opinions that you could not set aside. In order
4 for both sides here to have a fair trial, this
5 matter has to be decided on the evidence present in
6 the Courtroom and the instruction of law given.

7 It would be unfair to one side or the
8 other if the person let something they thought had
9 occurred because they read it in the newspaper
10 override what the evidence shows. The second issue
11 would concern the question of death penalty itself.
12 You have a wide spectrum of thought on the death
13 penalty. Some people very much favor it, and some
14 are equally as opposed to it. A person who thinks
15 that someone who takes another's life should
16 forfeit their life, if they really firmly believe
17 that, then they would be unfair to the Defense.
18 Because the defense has a right to have the Jury
19 determine other matters according to the law. It
20 is not the law of Ohio that you forfeit your life
21 if you take a life. Everyone who commits murder in
22 Ohio, does not face the death penalty. It has to

1 be under certain circumstances. We call -- they
2 are attached to the aggravated murder indictment,
3 we call them the specifications.

4 It is necessary for the State to prove
5 beyond a reasonable doubt, first of all, all of the
6 elements of the aggravated murder. The Jury has to
7 consider those to come to the conclusion of whether
8 the Defendant was guilty or not. If they decide
9 that the State has not proven their case, then that
10 is the end of the trial. If the State does
11 maintain that burden of proof, and this Jury would
12 come back with a finding of guilty, then it would
13 go to a second phase. At that second phase, the
14 burden is still on the State to prove beyond a
15 reasonable doubt that the circumstances outweigh
16 the mitigating factors. Now the Defense need not
17 present any evidence of any kind if they don't care
18 to. They have an opportunity in that second phase
19 to present what are known as mitigating factors.
20 And those are reasons given to the Jury to consider
21 why the death penalty should not be imposed. The
22 State's aggravating circumstances are why the State

1 feels the death penalty should be considered and
2 imposed. So, if you have somebody on this Jury who
3 could under no circumstances sit on a Jury, where
4 they had to decide that issue, the death penalty,
5 they have a religious or ethical consideration
6 opposed to it, well, that type of person cannot be
7 fair to the State. Because the State has the
8 right, if they prove their case, to at least have
9 the Jury consider that question according to the
10 law. And someone on the other side that believes
11 an eye for an eye, they could not be fair to the
12 Defendant. You understand?

13 MR. CARMICHAEL: Yes.

14 THE COURT: That is where these
15 questions will be going. Do you have any
16 questions?

17 MR. CARMICHAEL: Not right now.

18 EXAMINATION BY MR. BECKER OF MR. CARMICHAEL:

19 Q. Mr. Carmichael, my name is Chris Becker. I'm
20 Assistant Prosecutor at the County
21 Prosecutor's Office, and I think last
22 week you were down the hall in Judge

1 Logan's Courtroom, the very large
2 Courtroom, and I think Mr. Bailey was
3 there, and I was in another trial, so I
4 finished that case up and I am now here.

5 First of all, let me thank you for
6 being here. I think you are going to
7 find if you are selected for this Jury,
8 that it is probably the most important
9 civic duty that you can undertake as a
10 citizen of our country, and probably
11 short of serving the country in the
12 military, it is probably one of the most
13 important functions you can perform for
14 your community. Obviously, you are
15 interested in the community, because you
16 are a voter and you have registered to
17 vote and that is how we poll people for
18 the prospective Juries here in Trumbull
19 County.

20 You are already well aware that this
21 is a capital murder case, and it involves
22 the Defendant, Donna Roberts, who is

1 represented by Mr. Ingram, who stepped
2 out, and Mr. Juhasz, who is here. This
3 is really the only chance that the State
4 gets -- and that is why we're here,
5 Prosecution and the Defense get to speak
6 to you. We're never going to have this
7 opportunity again at this trial to speak
8 to you, because once the trial starts, we
9 have some ethical obligations that we
10 can't speak to the jurors. Once you are
11 seated as a juror, you sit in this juror
12 box, we can't speak to you, and we don't
13 want you to think we're rude or don't
14 like you. If you are picked for this
15 Jury and you are seated over in this Jury
16 box and we start putting witnesses on, we
17 can't speak to you. If we see you at
18 lunch are or in the parking lot or in the
19 hallways, we can't speak to you, because
20 obviously, it would seem as if we're
21 trying to influence you one way or the
22 other, or even if we're not, we want to

1 say, "Nice day outside," we can't speak
2 to you about that, because we don't want
3 to give the appearance that we're doing
4 something wrong.

5 It is really important right now,
6 that in the short period of time we're
7 going to have here this afternoon that we
8 get to know as much about you as relates
9 to this case. And we're not trying to
10 pry into your background. We're not
11 trying to snoop into your life or
12 anything like that, but there are certain
13 things that we have to know, so that we
14 can feel, we can find out if you are a
15 good juror for this particular case.

16 And obviously both sides, we have
17 different ideas of what a good juror is
18 going to be in this case. So with that
19 in mind, as the Court has indicated to
20 you, and by all means, if you have any
21 questions or I'm not explaining something
22 clearly, put your hand up and say, "Wait

1 a minute, you are going to have to
2 rephrase that, because I don't understand
3 what you are saying."

4 This is a death penalty case, and
5 really what it boils down to and what the
6 issue boils down to is, if the facts
7 warrant it and the law allows it, can you
8 go back in that Jury room at some point
9 and sign a piece of paper, put your name
10 to a piece of paper that would call for
11 the death penalty against this Defendant,
12 Donna Roberts?

13 A. I could.

14 Q. And we're really going to be a little
15 presumptuous here in this part of the
16 phase. As I said, we can't speak to you
17 once this case begins. And this case,
18 because it is a capital case, is going to
19 have two parts to it. It is going to
20 have a first part where you are going to
21 determine whether she's guilty or
22 innocent and you and your fellow jurors

1 may find she's innocent, and she doesn't
2 even need to be considered for the death
3 penalty, and we all go home and that is
4 the end of case. We go back to our
5 offices, you go back to the things you do
6 and your work and your enjoyment, and you
7 get back on with your life.

8 So, we're being presumptuous here,
9 if we get to the point where you do find
10 her guilty, we can't stop the trial and
11 say, "Who is in favor of the death
12 penalty?" There may be two or three that
13 say, "I'm not in favor of that," so we
14 have to ask you that up front. And it
15 seems a little straining, but sometimes
16 the law is a little straining. So, you
17 believe that you could impose the death
18 penalty on a person and sign a piece of
19 paper that calls for the imposition of
20 the death penalty in certain indications?

21 A. I could.

22 Q. Now, in Ohio, it is not mandatory that every

1 homicide has the death penalty as a
2 potential penalty. In fact, in this
3 particular case, you are going to be
4 given four options. You are going to
5 have life with no parole, life with
6 parole after 30 years, and life with
7 parole eligibility after 25 years. And
8 then of course, the ultimate penalty is
9 that you could consider the death
10 penalty. Are you under such a belief
11 here today, that if the State, if we get
12 to that first phase and we prove our case
13 beyond a reasonable doubt, and we prove
14 that it is a planned or premeditated
15 murder or that she's an accomplice in a
16 murder that you have to sign the death
17 penalty or will you favor the death
18 penalty over the other penalties?

19 A. No, I would consider all options.

20 Q. You would consider all options equally?

21 A. Yes.

22 Q. And when we get to the second phase, one of

1 the things, because the burden is always
2 on us, Mr. Bailey and I always have the
3 burden of proof and that is proof beyond
4 a reasonable doubt. We'll talk about
5 that in a little bit. But one of the
6 things that we always have to prove to
7 you is proof beyond a reasonable doubt.
8 And in that second phase, it is going to
9 be -- do the aggravating circumstances,
10 which are basically the things that make
11 her death penalty eligible, do they
12 outweigh any mitigating circumstances.
13 And there's really two ways, two sort of
14 hurdles that we would have to prove to
15 you.

16 First, we would have to prove to you
17 that those aggravating circumstances
18 exist and that they outweigh by proof
19 beyond a reasonable doubt. Then we have
20 to prove that they outweigh the
21 mitigating circumstances, which would be
22 the good things about Miss Roberts,

1 things that they would present to you,
2 but they may not have to present to you
3 anything, because we may not get to our
4 burden of proof on the aggravating
5 circumstances. You may find her guilty
6 of the crime, and we may present some
7 aggravating circumstances, but it may not
8 be enough to prove by proof beyond a
9 reasonable doubt, that she deserves the
10 death penalty. Am I making myself clear?

11 A. Kind of.

12 Q. It is sort of a strange way of proving things?
13 But we may not be able to prove our case,
14 in either the first phase or the second
15 phase. We always have the burden of
16 proof. Now, I am very confident that
17 Mr. Ingram and Mr. Juhasz are going to do
18 something in this trial, but
19 theoretically, in any criminal trial, the
20 Defendant and the Defendant's attorney,
21 never have to do anything. They don't
22 have to ask one witness one question.

1 They don't have to leave their seats.
2 They don't have to do anything. They can
3 sit over there and do the New York Times
4 crossword puzzle or read a magazine.
5 They could put on a head phone and listen
6 to music all the time. Because we have
7 the burden of proof, we have to prove
8 every element of the crimes, by proof
9 beyond a reasonable doubt. Does that
10 make sense to you?

11 A. Yes.

12 Q. So, if we don't prove the case, they can just
13 say, "Your Honor, we don't have anything
14 to add to this." And then they will sit
15 down or we'll argue, we have done all of
16 these wonderful things and they can say
17 they didn't prove squat. We were here
18 for three weeks and they wasted your time
19 because they haven't proved anything.
20 And you may agree with that, and say,
21 "Hey, they didn't prove their case." So
22 I guess what I'm saying to you is we

1 have -- it is our burden. It is always
2 our burden to prove things to you and
3 your fellow jurors, that either the crime
4 was committed by proof beyond a
5 reasonable doubt, or in the second phase,
6 if we get there, that we have proved that
7 the death penalty is warranted by proof
8 beyond a reasonable doubt. Do you
9 understand that?

10 A. Yes.

11 Q. We're over that hurdle, I guess, that you
12 would fairly consider the death penalty,
13 and all of the other options, you could
14 in fact, if the facts warranted it, and
15 the law allowed it, you could sign a
16 verdict calling for the death penalty,
17 correct?

18 A. Yes.

19 Q. Now the next question I have, and it is not
20 really clear from your questionnaire, it
21 doesn't appear as if you have heard
22 anything about this case, have you?

1 A. No, I don't get the paper. I don't watch the
2 local news.

3 Q. You watch things other than 33 and 27?

4 A. I usually don't watch T.V. at all. I have
5 been catching Fox news about Iraq, but
6 other than that, I don't watch it.

7 Q. And there's nothing wrong with that. A lot of
8 people come in here and people that live
9 in the northern part of the County, they
10 watch the Cleveland channels or some
11 people don't watch television, they watch
12 CNN or Fox news. And lot of people don't
13 subscribe to the newspapers. So you have
14 not heard anything about this case?

15 A. No, I don't know anything about it.

16 Q. That is in some sense good for this
17 proceeding. I was talking to you a
18 little bit about this, a criminal case,
19 and in a criminal case we have to prove,
20 as I mentioned, things beyond a
21 reasonable doubt. We have to prove that
22 is the level of proof and every person is

1 going to have a different idea in their
2 mind of what proof beyond a reasonable
3 doubt is. I may have a different notion
4 of it than you. You may have a different
5 notion than say your family members or
6 your friends. But, I'm going to tell you
7 one of the ways it has always been
8 compared to is, it is sort of like this
9 cup of water over here. These pitchers
10 of water. Their pitcher of water over
11 there is well below half full. That is
12 not proof beyond a reasonable doubt.

13 In the law, there's three really
14 basic, three basic standards. One is
15 preponderance of the evidence. That is
16 if we were here, let's say some doctor
17 had operated negligently on our patient
18 and he couldn't walk because of the
19 operation. The doctor botched it up and
20 he was chewing skiddles or something and
21 something fell and he cut our patient's
22 spinal cord. Now the guy can't walk. We

1 would have to prove to you by
2 preponderance of the evidence. That is
3 basically one drop over half full. If we
4 can prove that to you, we win our case
5 and you should find for us.

6 But in this case it is reasonable
7 doubt. It is proof beyond a reasonable
8 doubt. And everybody is going to have a
9 different idea of where that is in that
10 pitcher. Now it may be a quarter inch,
11 it may be an inch. It may be an inch, it
12 may be two inches from the top. It is
13 not all doubt. Because everything in
14 your life has doubt about it and there's
15 possible doubt, imaginary doubt. If I
16 suppose -- if a juror is not competent,
17 they could say, "Well, Martians came down
18 and killed people," and no one has done
19 any crime. It is all the devil or
20 something like that, so it is not filling
21 that pitcher up to the very top to the
22 point where the next drop overflows the

1 pitcher, but it is pretty close to the
2 top, and it changes for every person. Do
3 you understand that concept?

4 A. Yes.

5 Q. And in this case, not only do we have to prove
6 the four crimes that Miss Roberts is
7 charged with, we have to prove all of the
8 elements of those crimes by proof beyond
9 a reasonable doubt and every crime has
10 elements. And has sort of sections, so
11 if you kind of look at it like each crime
12 is may be a waitress's tray, and on that
13 tray are five or six drinks, and those
14 drinks don't have to be filled up to the
15 top, but they better be pretty close to
16 the top for reasonable doubt, maybe
17 within an inch or two or quarter inch or
18 half inch. When she brings them over to
19 you as a juror, when we bring those to a
20 juror, we better have all of those
21 glasses filled pretty close to the top to
22 prove our case beyond a reasonable doubt.

1 If we bring over a tray and it has got
2 five glasses, and four of them are filled
3 to about an inch to the top and the other
4 one is empty, we haven't proved our case.

5 Tied into that notion, I guess is
6 the idea that what we call the -- or I'm
7 sorry, what we call the presumption of
8 innocence and Miss Roberts' Fifth
9 Amendment right. As I mentioned to you
10 before, every Defendant, not just this
11 Defendant, every Defendant has the right
12 to not take the witness stand, to not
13 present to you any evidence, because it
14 is our burden. And I don't know what
15 their game plan is and I don't know if
16 she's going to take the witness stand or
17 not take the witness stand, but if she
18 sat over there and didn't do anything,
19 didn't mention a word, didn't present a
20 witness, you would still be able to find
21 her not guilty if we hadn't proved our
22 case, correct?

1 A. One more time.

2 Q. If our case when we're presenting it to you,
3 and we're done with our case, let's say
4 we present 30 witnesses, the best way I
5 can describe this for you is to use a
6 little example. Let's say there's a
7 traffic accident down here on Mahoning
8 Avenue and High Street and some guy
9 barrels through Mahoning Avenue and hits
10 a guy who is turning left on High Street,
11 and going south on Mahoning. Just
12 absolutely plows through it. We could
13 prove our case with probably one witness.
14 Would you agree with that, if that
15 witness was reliable enough?

16 A. No, I think you need more than that.

17 Q. What if the witness is -- I don't know if you
18 are religious or not religious?

19 A. No.

20 Q. Let's say our witness is the Pope. The Pope
21 happens to come to Warren, Ohio -- and
22 let's say it is the Pope. And he's out

1 here on the corner of High Street and
2 Mahoning Avenue and he says, "I saw the
3 whole thing myself. I swear to tell the
4 truth, I have never lied. You know I'm a
5 good person and I saw the whole thing.
6 And this guy came through the
7 intersection. I saw the light, the light
8 was red. He clearly went through the red
9 light. The guy was turning left onto
10 Mahoning Avenue. He had the little green
11 arrow, and I saw the whole thing." Would
12 that be enough for you to find that the
13 person who drove through that
14 intersection is guilty?

15 A. I don't know.

16 Q. You don't know?

17 A. No.

18 Q. If there were two witnesses there?

19 A. Possibly.

20 Q. And your perception of how those witnesses --

21 really what your job is as a juror is,

22 you are going to determine who is telling

1 the truth and who is not and who might
2 have a bias or interest in this case and
3 maybe not being truthful with you, right?

4 A. Right.

5 Q. Let's assume that the witnesses are two guys
6 that have stumbled out of Omalley's Bar
7 down here. There's an Irish bar down
8 there, they have been drinking there
9 since 6:00 a.m., it is now 7:00 at night.
10 They stumbled down the street and they
11 are related to the guy who has allegedly
12 been injured in this accident, turning
13 left. Kind of create some reasonable
14 doubt in your mind, doesn't it?

15 A. Right.

16 Q. About whether or not they really saw what they
17 say they saw?

18 A. Being the relationship.

19 Q. If they were brothers, the two brothers of the
20 guy who is accused of doing the
21 wrongdoing. You will be able to do those
22 kinds of things and test those kinds of

1 various evidence in this case, right?

2 A. Right.

3 Q. And again, I guess the point I'm trying to
4 drive home to you is, you would agree
5 that it is the quality of the evidence,
6 not the quantity? We may have 30 drunks
7 out there and they all may be cousins and
8 Uncles and Aunts of these alleged
9 Defendants, but that might not be enough
10 for you, because they may have some bias
11 and interest on whether their nephew and
12 brother gets off of the charge, right?

13 A. Correct.

14 Q. And you will look for those kinds of things,
15 those kind of biases or interests, and if
16 there is any, Mr. Ingram and Mr. Juhasz
17 will point them out to you if the State
18 has any witnesses here.

19 One of the things that you will be
20 unable to really consider in this case
21 and the Court will tell you is, you
22 really can't be sympathetic. You have

1 kind of got to eliminate sympathy from
2 your decision, so you may feel
3 sympathetic for the Defendant because
4 she's charged with these terrible crimes.
5 But if we prove our case, you would have
6 to set that aside. Do you think you can
7 do that, whatever sympathy you may have
8 for her?

9 A. Right.

10 Q. You would be able to do that?

11 A. Yes.

12 Q. In this case, you are probably going to see
13 some photographs of Mr. Fingerhut, who is
14 the victim in this case and they may be
15 rather gruesome. They are going to show
16 perhaps some injuries that aren't going
17 to be pleasant to look at, things that
18 most people don't see in their normal
19 lives and you may be sympathetic to him
20 and his family because he's dead. But
21 you wouldn't convict Miss Roberts, if we
22 didn't prove our case, and let's say that

1 waitress, we gave you that tray full of
2 drinks and one of them is empty, you are
3 not going to say, "I know the State
4 didn't prove all of the elements beyond a
5 reasonable doubt, but boy, I feel sorry
6 for that Fingerhut guy. He got shot.
7 He's dead. His family. I have got to
8 vote to convict." You wouldn't do that
9 unless we have proven our case?

10 A. No.

11 Q. Now in this case, one of the things that some
12 of the evidence we may have is what we
13 call circumstantial evidence. And I'm
14 going to use, I guess, an example that
15 may be will be near and dear to you.
16 Apparently one of your major hobbies is
17 you do a lot of paint balling. I think
18 you are wearing a paint ball shirt today?

19 A. That is fine.

20 Q. That is a very interesting hobby that you
21 have. Do you guys play at a regular
22 place or engage in this activity at

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1 regular locations?

2 A. Usually in the back, in somebody's woods of
3 somebody we know.

4 Q. And I am assuming that when you guys play, is
5 there a rule like you have got to be hit
6 so many times?

7 A. It is one shot.

8 Q. And I don't know, is there a certain color
9 paint that they use?

10 | A. Whatever.

11 Q. Let's say four of you are in there and I
12 assume you do it like we used to do it
13 when I was younger. You break up into
14 teams and there's two or three teams?

15	A. Two teams.
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16 Q. And you got two teams in there and there's two
17 guys on each, and you go in and you see
18 you and your team mate and the other
19 team, and they go in there, they don't
20 have anything on, on them as far as
21 paint, no paint on them, and about an
22 hour later, you are in the woods and you

1 fired three or four times and people
2 fired at you, things over, you guys come
3 out, and your partner let's say is your
4 friend, and he comes up to you and he's
5 covered. He's got paint on his head,
6 he's got it on his chest, his legs. You
7 never saw him get hit, but you can assume
8 the other team got him, right?

9 A. Right.

10 Q. That is circumstantial evidence. You didn't
11 see him get hit, but you can see he's
12 covered in paint, right? Can you use
13 those kinds of things in this case -- or
14 I'm going to tell you, the Court is going
15 to tell you, you can use circumstantial
16 evidence in this case, and it has the
17 same weight as direct evidence. So, the
18 fact you see your buddy covered in paint
19 and he's back in the woods, you can
20 assume one of the other two guys got him?

21 A. I can assume that, yes.

22 Q. And you will be able to make that inference in

1 this case? You won't have to have seen
2 directly that someone had shot him and to
3 know that he got shot, right?

4 A. I can't say it was the Defendant.

5 Q. I understand that. And that is a good point.
6 You can't say -- let's go back to the
7 example. Your buddy comes out, he's got
8 paint on the head, chest and leg, you
9 can't say which one of the two guys got
10 him, but somebody got him, right?

11 A. Right.

12 Q. And if the proposition was that one of the
13 elements we had to prove that he got hit,
14 you would agree that he got hit. If the
15 element was we had to prove who hit him,
16 you might have some trouble with that.
17 You might say, there are two guys in the
18 woods, I don't know which guy got him.

19 A. Right.

20 Q. Let's assume the two guys in the woods, one
21 guy has green paint and one has red
22 paint. Your buddy comes out with red and

1 the other one says, "I got him, I got the
2 red paint gun," you are going to tend to
3 believe that. Even though you didn't see
4 him get hit, he's the one that got the
5 red paint in his gun?

6 A. Right.

7 Q. You can make inferences and assume things
8 based on one inference upon a fact,
9 right?

10 A. Right.

11 Q. Because you may have to do some of that in
12 this case. Now, Mr. Carmichael, I want
13 to ask you, in this particular case,
14 we're going to get, maybe trying to get a
15 little more specific as to what is
16 charged here. In this particular case,
17 Miss Roberts is charged with complicity,
18 and I don't know if you are familiar with
19 that term or know what it, but it is
20 aiding and abetting. It basically means
21 to help. And the Judge will give you all
22 kinds of definitions as to what it is --

1 encourage, incite, help, aid and abet.
2 We're going to tell you right now, she's
3 not the one that killed the person who is
4 the deceased in this case. She didn't
5 pull the trigger. She didn't shoot him.
6 She didn't do that. Does that change
7 anything for you in terms of whether or
8 not you could find her guilty or not
9 guilty?

10 MR. INGRAM: Objection. It is
11 simply unreasonable.

12 MR. BECKER: I'll withdraw.

13 Q. Are you going to require more or less proof
14 because someone is charged with helping
15 someone or are you going to follow what
16 the Court says and if the Court tells you
17 that these elements have been satisfied,
18 you are going to be satisfied with it?

19 A. I'm trying to understand the last part what
20 you said.

21 Q. Let me come about this a different way. Is it
22 going to change for you, or make it more

1 difficult for you, let's assume we get
2 through this first part where we prove
3 all of the elements of the crimes beyond
4 a reasonable doubt, you are satisfied and
5 now we're in the second phase. Are you
6 going to be more likely not to impose the
7 death penalty or less likely to impose
8 the death penalty because she's not
9 actually what we call the person that
10 pulled the trigger, the trigger man, or
11 is that not going to change anything?

12 A. That is not going to change nothing.

13 Q. And proving that case to you, back in that
14 first phase, is it going to be more
15 difficult for us to prove our case
16 because she may not be the actual trigger
17 man or are you just going to follow the
18 law as the Court gives it to you, and it
19 is not going to make a difference one way
20 or another? There's no right or wrong
21 answer.

22 A. I can't answer that, I don't know.

1 Q. You would feel comfortable, even if we can't
2 prove that she's the trigger person, you
3 could still find her guilty if we met our
4 burden of proof as the Court instructs
5 you as to what the elements are?

6 A. Okay, yes, I can do that.

7 Q. Do you have any questions that you feel you
8 need to ask myself or Mr. Bailey or the
9 Court about this service?

10 A. I'm just wondering, because I'm going to be
11 leaving town at the end of July. I
12 wanted to make sure.

13 Q. If we're not done by July, we'll all leave
14 town.

15 A. That is my only thing.

16 Q. You don't have any pressing concerns with work
17 or employment or anything?

18 A. Work seems to be pretty good with this.

19 Q. They realize that once you get summoned here
20 to appear as a juror, they realize they
21 have an obligation to let you come here?

22 A. Right.

1 Q. It is not going to create any hardships for
2 you other than in July, you have some
3 kind of trip planned?

4 A. Yes.

5 Q. As long as we don't go into July, which we
6 won't, you will be okay?

7 A. Okay.

8 Q. Anything else you can think of?

9 A. No, not offhand.

10 MR. BECKER: Thank you.

11 EXAMINATION BY MR. JUHASZ OF MR. CARMICHAEL:

12 Q. Hi, Mr. Carmichael. I don't know if you
13 remember from last week or not when Judge
14 Stuard had everybody stand up. My name
15 is John Juhasz, and my friend, Jerry
16 Ingram over there sitting at the table,
17 he and I are representing Donna Roberts
18 who is also sitting over there at the
19 table. What we're really doing here
20 today is sort of a modified version of
21 interviewing you for a job -- because you
22 have a job right now?

1 A. That is what I seemed that it was.

2 Q. This is a special job. The difference is,
3 where do you work, Kraftmaid?

4 A. Yes.

5 Q. You probably went to Kraftmaid and applied for
6 the job, right?

7 A. Yes.

8 Q. Here, you didn't apply, you voted and as a
9 result of voting, somebody pulled your
10 name out of a drum and they sent you a
11 little invitation to come?

12 A. Right.

13 Q. You can probably tell from everything you have
14 read and everything that everybody has
15 talked to you about, it's a pretty
16 serious job, because there's the
17 potential that this case could go to a
18 second phase where you may have to decide
19 if the Defendant receives a death
20 sentence or a life sentence. You
21 appreciate that?

22 A. Yes.

1 Q. One of the reasons that we're up here asking
2 you all of these silly questions is
3 there's an example that I like to use
4 sometimes, which has to do with my son.
5 My son is 18 now. And he used to be a
6 paint baller, too, by the way. I
7 probably have some guns that may be you
8 want to talk to me about later that are
9 sitting in my den. When he was younger
10 and I coached baseball, sometimes, we
11 would show up for a game and the umpires
12 wouldn't show up. They went and got
13 drunk or because we didn't pay them very
14 much or whatever, but we would have a
15 time with parents and kids ready to play
16 and no umpire. Once in a while, they
17 would say, "You guys have three coaches
18 and we only have two, why don't you take
19 one of your extra coaches and have him be
20 the umpire." Seems fine. Let's say they
21 asked me and I say, "What the heck, I'm a
22 fair guy, I can do this." What I didn't

1 think about, however, might be a
2 situation like, we get to the bottom of
3 the ninth and the game is tied two to
4 two, and Mike, my son, is on second base,
5 there's two outs. Somebody comes up,
6 there's a base hit to the outfield. Here
7 comes Mike -- I won't say tearing down
8 third base, because he's a big kid, so
9 lumbering down from second to third and
10 making the turn, because he's getting
11 waved home and there's the big play at
12 the plate. And if I call him safe, his
13 team wins the game. If I call him out,
14 he's probably mad at me, the coaches are
15 mad at me and we have got to go into
16 extra innings and all of that extra
17 stuff. Here's my point about all of
18 that. Before taking on that
19 responsibility of umpiring that game, I
20 should have thought about the possibility
21 that something like that could happen and
22 maybe even the coaches from both teams

1 should have asked me about that and said,
2 "If we let you do this, and something
3 like this happens, are you going to set
4 aside your feelings for your son, and
5 call the balls and strikes and the safe
6 and outs objectively?" Does that make
7 sense to you?

8 A. Yes.

9 Q. It is what we're doing here is a little bit
10 like that also, because we want to see if
11 there's something about how you feel
12 about the things that we're talking
13 about, and the things that you might be
14 called upon to do that might keep you
15 from doing it. But at the same time,
16 we're trying not to say, "Well, if this
17 guy slides in and this guy puts the tag
18 on him, how would you call that
19 particular play?" And the reason it is
20 unfair to ask you that latter question is
21 because you haven't heard any evidence in
22 this case yet.

1 A. Right.

2 Q. So, really all we're trying to do, and all
3 we're asking you to do is sort of look
4 inside yourself and tell us, if based
5 upon how you think or feel about the
6 issues that we're talking to you about,
7 if there's something that would keep you
8 from following the instructions that
9 Judge Stuard is going to give you later
10 if you become a juror. Now, it seems to
11 me that you don't know anything about
12 this case, correct?

13 A. No.

14 Q. So, there's nothing that is likely to pop into
15 your head if you hear evidence that might
16 conjure up some newspaper article or T.V.
17 story. You think that is pretty unlikely
18 that is going to happen?

19 A. It is very unlikely.

20 Q. Let's jump to the second thing then. The
21 second major topic that we talk about and
22 that is the death penalty and you have

1 written down on your questionnaire, your
2 views about the death penalty. All I
3 really want to find out from you about
4 that are a few things.

5 First of all, do you feel
6 comfortable with understanding not
7 necessarily what the particular facts are
8 in this case, or what you might be asked
9 to consider, specifically, but generally,
10 do you understand how the two phase trial
11 works in a case like this?

12 A. No. I have never done this before.

13 Q. Let's take a second and talk about that.

14 Mr. Becker has talked to you about the
15 State having the burden and all of that
16 stuff. You remember those conversations?

17 A. Yes.

18 Q. The first part of a trial like this is like
19 any other criminal trial. You almost
20 have to put it out of your mind for a
21 second. That it is what we call a
22 capital trial or a death penalty trial.

1 Because first of all, you and I can
2 probably agree and I think probably
3 everybody in the room can agree, that if
4 you find the person not guilty, there
5 wouldn't be any punishment that would be
6 appropriate, correct?

7 A. Correct.

8 Q. You don't want to punish somebody if you find
9 out they didn't do anything wrong,
10 correct?

11 A. Correct.

12 Q. The first thing we need to do is think about
13 the trial like any other criminal trial,
14 and I'm going to give you a silly little
15 example that I like to use for two
16 reasons. One, it doesn't have anything
17 to do with this case; and two, I think it
18 is actually easier to talk about than
19 some of the things we have to talk about
20 in this case if you are picked as a
21 juror. Judge Stuard has told you that if
22 you commit murder in this State, you

1 don't automatically get the death
2 penalty, you recall that?

3 A. Yes, I do.

4 Q. The legislature, the General Assembly in
5 Columbus that writes all of the laws that
6 we live by, has said then only for
7 certain murders are you even eligible to
8 get the death penalty. And in a statute,
9 in a law, they have listed out what those
10 things are that make sort of, I don't
11 want to say ordinary murder, because any
12 murder is tragic, but aggravated murder
13 is what makes it more serious where you
14 could be considered for the death
15 penalty. One of those that I want to
16 talk about this afternoon is if you kill
17 the Governor. Because, let's just jump
18 back for one second. Even if I planned
19 it, if I said, "You know what, if I come
20 up here tomorrow, I am going to bring a
21 gun with me and I'm going to kill my
22 buddy Jerry Ingram. I just can't take it

1 anymore. He's driving me crazy during
2 this trial. I can't handle it anymore.
3 I'm going to kill him. I have thought
4 about it, I have planned it out." I made
5 the steps of sneaking a gun into a
6 Courthouse and I walk up to him and I
7 shoot him. That is what we would call
8 aggravated murder, because I did it with
9 planning or prior calculation and design.
10 But -- and while I can go to jail for a
11 very long time for that, I could not get
12 the death penalty unless it is one of
13 these murders that made it special. So
14 now, as I told you, one of the things
15 that the General Assembly has said makes
16 a murder special or more serious, that we
17 can consider imposing the death penalty
18 is if the person you kill is the
19 Governor. So, let's say that I get
20 charged for that. And the Grand Jury
21 gives me a piece of paper and says,
22 "Juhasz, you killed Bob Taft. We say you

1 did that, you planned it, and you did
2 it." Aggravated murder. "Juhasz, we're
3 telling you something else in this piece
4 of paper. It is called a specification."
5 But what it really is, it is a notice to
6 me to say, hello, this is not just your
7 ordinary aggravated murder case, Juhasz,
8 you could get the death penalty, because
9 we're adding a special allegation that
10 says the guy that you killed was Bob Taft
11 and he was the Governor of the State of
12 Ohio. So, we're saying to you that if we
13 can prove this, this is a more serious
14 murder for which you might get the death
15 penalty. Are you with me so far?

16 A. Yes.

17 Q. Now, as in any other criminal trial, they have
18 to go about proving that. In the case I
19 told you about with Jerry, they might, if
20 I did it here in the Courtroom, they
21 might call all of these people who are
22 here as witnesses, and say, "I know

1 Juhasz, that is him sitting over there
2 with his lawyer, Ben Matlock. I saw him
3 pull out a gun. I saw him walk over to
4 Ingram and I saw him shoot him."

5 A. Right.

6 Q. And if that pitcher Mr. Becker was talking
7 about, if you as a juror, believed what
8 all of those witnesses said beyond a
9 reasonable doubt, then I would be guilty
10 of aggravated murder?

11 A. Right.

12 Q. Let's distinguish that now from that special
13 case I am talking about where they said,
14 "Juhasz, you killed Bob Taft." So maybe
15 they produced witnesses again, and they
16 fill up the box called aggravated murder
17 with all of its elements, which
18 Mr. Becker talked to you about, the tray
19 with the glasses, but they prove to your
20 satisfaction that I killed a guy named
21 Bob Taft. They fill up that box, but
22 they forgot to do something in this case.

1 They forgot to prove to you that Bob Taft
2 was the Governor, because remember that
3 is the thing that makes it a special
4 murder. And who knows how they would do
5 it, maybe they would come in with some
6 fancy looking piece of paper with ribbons
7 and sealing dripping off it that says,
8 "Bob Taft was elected the Governor of the
9 State, and he was sworn in on this date,"
10 and so, you know that I killed him after
11 that, and so maybe you could conclude
12 from that, that they proved he was the
13 Governor when I killed him or maybe they
14 called in Thomas Moyer, the Chief Justice
15 of the Ohio Supreme Court who says, "Yes,
16 see the picture of that dead guy Bob
17 Taft, I swore him in on the steps of the
18 Capital. I am the Chief Justice of the
19 State of Ohio, I swore him in. He was
20 the Governor." Now they proved it. But
21 let's say they didn't do that. They just
22 proved that I killed a guy named Bob

1 Taft. You might be able to find me
2 guilty of aggravated murder, but if they
3 didn't do one of those extra things I
4 talked about, even though you go back in
5 the Jury room and say to yourself, "I
6 read the newspaper, I look at the news on
7 the Internet," whatever, "I listened to
8 it in the car, I know Bob Taft is the
9 Governor." You wouldn't be able to find
10 me guilty and do you know why?

11 A. Because they didn't prove it.

12 Q. So, we're okay with all of that?

13 A. Yes.

14 Q. So, the first phase of one of these trials
15 works just like that. First they have to
16 prove the person guilty of the crime, if
17 they can do that, and then they
18 separately have to prove one of those
19 special circumstances. If they do that
20 in this imaginary case where I killed Bob
21 Taft, then we would go to a second phase,
22 because now you found me guilty of the

1 aggravated murder and you found me guilty
2 of a special circumstance that says that
3 it is more serious than the ordinary
4 aggravated murder, and you should
5 consider whether or not to give me a more
6 serious penalty, i.e., the death penalty.

7 A. I have a question. If you only go to the
8 second phase, if you do the special
9 circumstance --

10 Q. Yes, Sir. In those two examples that I gave
11 you where the Taft trial goes either way,
12 the first one they forgot to prove that
13 he's the Governor, your job would be done
14 if you found me guilty of aggravated
15 murder, but not guilty of that special
16 circumstance. Because then, you don't
17 get to that special phase where you
18 decide penalty. That would be up to the
19 Judge to decide what happens to me. Your
20 job would be done. It is only if they
21 prove not only the crime, but that
22 special circumstance beyond a reasonable

1 doubt, that you then go to the second
2 phase.

3 A. Okay.

4 Q. Are you okay with that?

5 A. Now, yes.

6 Q. It is new territory and believe me, there are
7 tons of lawyers in this State who don't
8 know how this works. Don't feel bad.

9 A. Okay.

10 Q. Now, if we go to that second phase, because
11 now you have found me guilty, and you
12 found one of those special circumstances,
13 it is appropriate to consider punishment
14 for me because I am guilty, right?

15 A. Right.

16 Q. And, you found one of those special
17 circumstances by proof beyond a
18 reasonable doubt, so it is appropriate to
19 consider whether I should get a more
20 severe penalty, maybe even the death
21 penalty?

22 A. Right.

1 Q. So that is the second part of the trial. And
2 in a way, we start over again. Because
3 now the State has to fill up a pitcher
4 again. They have to convince you, really
5 of two things. That the reasons to
6 impose the death penalty outweigh the
7 reasons not to impose the death penalty.
8 And that the death penalty is appropriate
9 for me in this case. And they have to
10 prove that by proof beyond a reasonable
11 doubt.

12 A. Okay.

13 Q. You okay with all of that?

14 A. Yes.

15 Q. If you got to a second phase like that, as I
16 think the Judge told you -- but let's go
17 over it again, it is all new material.
18 There are four potential penalties, you
19 remember that?

20 A. Yes.

21 Q. Death, life without parole, and two life
22 sentences where I could get parole,

1 doesn't mean I'll get parole, just means
2 I get a shot at a parole hearing down the
3 road. Remember -- you ever see Shawshank
4 Redemption with Morgan Freeman? In that
5 movie he keeps going up to parole and
6 they keep stamping reject and he stays in
7 prison. It is the same thing here, after
8 30 years I might get a hearing, but they
9 may reject it, or 25 years.

10 Here's the point that I wanted to
11 find out from you, if we got to a second
12 phase like that, is there anything about
13 how you feel about the death penalty that
14 would give one of those penalties a leg
15 up going into the second phase or would
16 you consider them all equally?

17 A. I would consider them all.

18 Q. And the State would have to prove to you as I
19 said before, in order me to get the death
20 penalty, they would have to prove to you
21 that the reasons to give me the death
22 penalty outweigh the reasons not to give

1 me the death penalty by proof beyond a
2 reasonable doubt, and you would make them
3 do that?

4 A. Right.

5 Q. And they would have to prove to you that the
6 death penalty was the appropriate penalty
7 for me in this case and you would make
8 them do that?

9 A. Yes.

10 Q. Mr. Becker also asked you some questions about
11 aiding and abetting, or complicity. And
12 I think he told you that they are saying
13 they are coming right out and telling you
14 that they are not saying Donna Roberts is
15 the person who killed Mr. Fingerhut in
16 this case. You appreciate that?

17 A. Right.

18 Q. I wanted to talk for a second about aiding and
19 abetting just to make sure that you are
20 clear with that, because one of the
21 things that we do as lawyers is that in a
22 way, and I don't think we mean to do it,

1 but we're kind of arrogant, because we
2 take you away from your job at Kraftmaid
3 and say, "Come on here and be a juror,"
4 and we're going to give you all of these
5 new rules for how to do your job. It
6 would be sort of like you start at
7 Kraftmaid and they say you need to know
8 everything about your job within the
9 first 15 minutes and say go to work. We
10 kind of do that?

11 A. Actually, they did do that.

12 Q. So I want to take some time to talk about
13 that, so you don't feel that same way,
14 because we're giving you all new rules
15 and saying, "Here, these are the rules to
16 do your job by." Let's change the figure
17 for a second. Let's pretend that you and
18 I are out driving around one night. And
19 you know, we're sort of ne'er-do-well, we
20 don't have a lot of money. We're on our
21 last six pack and in front, we have just
22 thrown the last two cans in the back

1 seat. And I look at you and say, "Hey,
2 we need some more beer." And you go,
3 "Yes, got any money? No. You got any
4 money? No." I say, "Pull into this 7-11
5 right here." You say, "What are you
6 going to do? Just pull in here. I'm
7 going to get us some money." And I reach
8 in and I pull a gun out of my pocket.
9 You go, "What the hell are you going to
10 do? Listen, you just watch for the cops,
11 I'm going to go get us some money and
12 some beer." Now, you have a pretty good
13 idea that I don't have any money and when
14 I say I'm coming out with money and beer
15 and I have got a gun, I'm going to do
16 something wrong, correct?

17 A. Correct.

18 Q. You don't go into the 7-11 with me?

19 A. Right.

20 Q. But you are sitting in the car, right?

21 A. Right.

22 Q. When I come out and I got the beer and I got

1 the money, you are going to take off,
2 right?

3 A. I would probably take off once you got to the
4 door.

5 Q. Let's just pretend that you probably would and
6 you would be smart if you did that. You
7 are hanging around with me so you are not
8 too smart in the first place. So you
9 wait and you know what I am doing. First
10 of all, if the robbery goes the way I
11 want it to go, even though all you did
12 was sit in the car and drove me away, you
13 might get charged the same as me for
14 participating in that robbery. That is
15 what we call complicity or aiding and
16 abetting. Because you did something to
17 help me. Maybe even the cops come while
18 I am in there and you hit the horn. So
19 that I'll know to take off, you have done
20 something now to help me. And your
21 argument is going to be, if you get
22 charged, "I didn't go in there, I didn't

1 have a gun." And their argument is going
2 to be, "But you knew Juhasz did and you
3 knew what he was going to do and you
4 helped him, because when the cops drove
5 by you hit the horn. When he came out
6 with the beer and the money and the gun,
7 saying, let's get the hell out of here
8 and he jumped in the car, you took off
9 and you didn't drive him to the police
10 station, you went and split up the money
11 and drank the beer." They are going to
12 say you are just as guilty as me under
13 what we call complicity or aiding and
14 abetting.

15 A. Okay.

16 Q. Let's change it a little bit, because you
17 sound to me from the answer that you gave
18 Mr. Becker, like the kind of guy who is
19 going to make the State stick to its
20 burden of proof, if they don't convince
21 you beyond a reasonable doubt you are
22 going to vote not guilty, am I right

1 about that?

2 A. Right.

3 Q. So let's change my story a little bit. We're
4 out drinking and we run out of the beer.
5 And I say, "We need some more beer." And
6 I say to you, "Do you have any money?"
7 No. "Well, you know what, pull in here.
8 What are you going to do? I am going to
9 get us some more beer." You haven't seen
10 me pulling out a gun. I haven't told you
11 whether I have any more money. And you
12 wait for me. I come out, and I got some
13 beer. Maybe I pulled a gun in there, and
14 said, "Honey, give me a six pack of Busch
15 and also empty the drawer while you are
16 at it." And when I came out, I got the
17 gun stuck away, I got the money stuck
18 away, I don't even split it with you.

19 A. Okay.

20 Q. In that circumstance, you didn't do anything
21 to help me knowingly, did you?

22 A. Right.

1 Q. You didn't do anything to make my job of
2 robbing easier knowingly, right?

3 A. Right.

4 Q. So in that case, you see where you would have
5 a much better case to say, "I didn't
6 encourage him, I didn't strengthen him, I
7 didn't aid him in any way"?

8 A. Correct.

9 Q. So, one of the things that you are going to
10 have to decide in this case is whether
11 the State can prove that Miss Roberts did
12 any of those things to help the person
13 they say killed Mr. Fingerhut. You think
14 you can hold them to a burden of proving
15 that beyond a reasonable doubt?

16 A. Yes.

17 Q. If they don't prove it to you beyond a
18 reasonable doubt, do you have any
19 problems voting to find her not guilty?

20 A. No.

21 Q. Even though there's a dead guy, you still okay
22 with that?

1 A. Right. Somebody else is guilty, not this
2 trial.

3 Q. How are you doing?

4 A. I got a headache.

5 Q. I am almost done, so your headache is going to
6 get better shortly. Any problem
7 presuming -- let me ask it this way. You
8 have been accused of something you didn't
9 do.

10 A. Yes.

11 Q. How did that make you feel?

12 A. Like shit.

13 Q. And in this case, there's sort of the same
14 kind of presumption in the case. We have
15 a constitutional provision that says,
16 just because the Government charges you
17 with something, just because they say you
18 did you something, it is still as if you
19 are being accused of something you didn't
20 do. We call that the presumption of
21 innocence.

22 A. Okay.

1 Q. To overcome that, you would expect that the
2 Government is going to have to give you
3 some pretty substantial proof, correct?

4 A. Right.

5 Q. And you are going to want to test that proof
6 to make sure that it is really good
7 evidence, correct?

8 A. Yes.

9 Q. Because the person who is accused is sort of
10 in that same situation. They are accused
11 of something that they say they did not
12 do. And any problem with testing the
13 Government's evidence that way?

14 A. No.

15 Q. Any problem holding them to the burden of
16 proof?

17 A. No.

18 Q. Anything that I have made unclear to you?

19 A. No.

20 Q. Do you have questions at all about the process
21 or anything like that?

22 A. Not that I can think of.

1 Q. And just to make sure that you and I are on
2 the same page, there's nothing about how
3 you feel about the death penalty that
4 would make you favor one penalty over
5 another?

6 A. No.

7 MR. JUHASZ: Thank you very much. I
8 appreciate it.

9 (SIDE BAR DISCUSSION, OFF THE RECORD AND
10 OUT OF HEARING)

11 THE COURT: Mr. Carmichael, you are
12 going to be in the pool from which this Jury will
13 be selected. You should call a week Friday, not
14 this coming Friday, after 4:30 to get further
15 instructions of when to return. We're going to
16 spend all next week going through questions with
17 other people until we get 34 of you from which the
18 Jury can be selected. I would again advise you not
19 to discuss anything about this case with anyone,
20 you should read nothing in the newspaper, and
21 nothing on T.V. I doubt if anything will appear on
22 the Internet, but in any event.

1 (Juror No. 59 excused from the Courtroom.)

2 THE COURT: For the record, both
3 parties have passed on cause for Mr. Carmichael, is
4 that correct?

5 MR. BAILEY: Yes, Sir.

6 MR. JUHASZ: Yes, Sir.

7 (OFF THE RECORD)

8 (Court in Recess at 3:05 p.m.)

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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

1535

1 IN THE COURT OF COMMON PLEAS
2 TRUMBULL COUNTY, OHIO
3 TRIAL COURT CASE NO. 01-CR-793
4 SUPREME COURT OF OHIO CASE NO. 03-1441

4 STATE OF OHIO) VOLUME VII
5 Plaintiff)
6 -vs-) INDIVIDUAL VOIR DIRE
7 DONNA M. ROBERTS)
8 Defendant)

9 BE IT REMEMBERED, that on Wednesday, April 16,
10 2003, these proceedings came on to be heard before
11 one of the Judges of this Court, John M. Stuard,
12 in Courtroom No. 2, on High Street, Warren, Ohio,
13 before the case heretofore filed herein.

14
15
16
17 Mary Ann Mills, RPR
18 Official Court Reporter
19 Trumbull County, Ohio
20
21
22

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I N D E X

VOLUME VII:

(Wednesday, April 16, 2003)

Individual Voir Dire:

Linda Black	1537
Panda Lantz	1614
Lawrence King	1698
Cynthia Sase	1705
Shirley Biel	1761

1 Wednesday, April 16, 2003; In Open Court at 9:30 a.m.:

2 (Juror No. 63, Linda Black, entered the Courtroom.)

3 THE COURT: Linda, you read the
4 handout that was given to you?

5 MS. BLACK : Yes, I have.

6 THE COURT: The purpose of having
7 you in this morning is to ask you questions
8 concerning two main areas of inquiry. This case,
9 as any case of this type, received its due share of
10 publicity. I notice you take the Sharon Herald.

11 MS. BLACK : I used to subscribe to
12 it. I haven't for probably over a year. I always
13 say at the most I read it once a month.

14 THE COURT: You don't subscribe to
15 the Tribune?

16 MS. BLACK : No.

17 THE COURT: I am from that area
18 myself and I know most of the people still get the
19 Herald because Sharon is where you look at as town,
20 right?

21 MS. BLACK : I'm more interested in
22 Pennsylvania news, because I am from Pennsylvania

1 originally.

2 THE COURT: These folks will want to
3 know what exposure you have had to the facts of
4 this case, if any, and if you are familiar with
5 anything concerning the matter of whether it is
6 something that would influence your ability to sit
7 on a Jury. Many of the folks will have read
8 something about it or seen something or saw
9 something on television. That doesn't disqualify a
10 juror, it is whether they have a fixed opinion.
11 Because the case has to be decided on the evidence,
12 which this Jury will hear in this Courtroom. So
13 that is one area they will ask you about.

14 The second area is what your thoughts are
15 on the death penalty itself. Now, Donna Roberts is
16 charged with aggravated murder, with attached
17 specifications. Under the law of Ohio, everyone
18 who or anyone who commits a murder does not
19 necessarily qualify for the death penalty. It has
20 to be under certain circumstances which have been
21 set forth by the legislature as reasons why the
22 Jury would be called upon to consider the death

1 penalty. The burden is always on the State to go
2 forward to prove all elements of any charge against
3 any Defendant. The Defendant need do nothing. We
4 all have that right, and this case will be put to
5 this Jury to determine the guilt or innocence of
6 Donna Roberts concerning the charge of aggravated
7 murder. The State must prove each and every
8 element beyond a reasonable doubt along with the
9 specifications attached.

10 This case, it concerns a robbery and a
11 burglary. If the State fails to maintain that
12 burden of proof and present each element of the
13 charge beyond a reasonable doubt, then this Jury
14 would rightly find not guilty. If the State does
15 maintain that burden of proof, then the Jury could
16 return a verdict of guilty. If that would occur,
17 then the matter would go to a second phase, and at
18 that time, the Jury would be called upon to listen
19 to further evidence, whereby the aggravating
20 circumstances would have to be proven again by the
21 State beyond a reasonable doubt, and the Defense
22 has an opportunity to present at that point

1 mitigating factors. And those are reasons why the
2 Jury should not impose the death penalty.

3 So, as I say, the case may not get to
4 that point, but if it does, each potential juror
5 has to be able to follow the law. The law is under
6 certain circumstances, where the State has proven
7 their case, that raises the specter of the death
8 penalty being one of four possible recommendations
9 this Jury will give to the Judge.

10 If they determine that the death penalty
11 is not warranted, then they have three other
12 options concerning life without chance of parole
13 and life with lessor time of 25 or 30 years before
14 parole. Some people strongly believe that a person
15 who takes another's life should forfeit their own.
16 An eye for an eye. That is not the law of Ohio.

17 There are other people who under no
18 circumstances could participate in a Jury where
19 they had to make that decision. I suspect most
20 people are somewhere in between. Some more
21 favorable to the death penalty. Some less. Those
22 are the type of people that probably should be

1 sitting on this Jury. The is whether they are able
2 to follow the law, setting aside their own
3 preference in the matter.

4 MS. BLACK : Okay.

5 THE COURT: Mr. Bailey?

6 EXAMINATION BY MR. BAILEY OF MS. BLACK:

7 Q. Good morning, Miss Black. My name is Ken
8 Bailey. I'm Assistant Prosecutor with
9 the Trumbull County Prosecutor's Office,
10 and as I promised you last week, I would
11 be joined this week by Chris Becker,
12 another Assistant Prosecutor in our
13 office. And together we're responsible
14 for handling this case on behalf of the
15 people of Trumbull County and the State
16 of Ohio. Now, a couple of things, when
17 we start out and you have been through
18 this process before, you served on two
19 Juries, a criminal case and a civil case.
20 So you are pretty well familiar with it.
21 This case is a little bit different
22 because it could go into the second

1 phase. The first phase would be just
2 like your other trials, the issue is
3 guilt or non-guilt of the Defendant. You
4 are aware the Defendant is presumed
5 guilty -- I mean presumed innocent as are
6 all other Defendants tried in this
7 Courtroom and that presumption of
8 innocence stays with her through the
9 entire course of the trial.

10 And the burden as the Judge said of
11 proving the elements of the crime are
12 entirely on us, the people of the State.
13 If we fail to prove one of those
14 elements, even though you feel, based on
15 the testimony and the evidence that she
16 really did it, you still have to find her
17 not guilty if we leave out one of the
18 elements.

19 A. I understand that.

20 Q. You are familiar with elements, because you
21 had it in your last criminal case?

22 A. Yes.

1 Q. Now, this is -- because it is a capital murder
2 case, because the death penalty is a
3 possible punishment, and because if the
4 case moves to a second phase, the Jury
5 gets involved with a recommendation as to
6 the appropriate penalty in this case.
7 Then, the situation here is a little
8 different. The questions that we're
9 going to be asking you compared to what
10 you underwent before, and if you have any
11 questions during these proceedings, feel
12 free to ask them, because it is sort of a
13 give and take right now, and if you have
14 questions about what we're doing, if we
15 can get an answer for you, that would be
16 fine.

17 You are aware that you can't have
18 any contact with us after we're done
19 talking today until both phases are over,
20 assuming we get to the second phase. If
21 you have questions, you have got to
22 direct them to the bailiff, who will be

1 here later and during the course of the
2 trial. Or to Mary Ann, our Court
3 Reporter or to the Judge. You are aware
4 you can't go out to the scene of the
5 crime to investigate on your own, because
6 that would cause a mistrial. Only if you
7 are taken under the direction of the
8 bailiff.

9 And the prior criminal case on which
10 you served -- what kind of case was that?

11 A. A murder. I can't remember if it was Ricky
12 somebody. It was more or less a drug
13 deal. It was somewhere in Warren and
14 they did take us there, so I'm not
15 familiar with Warren, so they did take us
16 there. Some little store or something
17 and he also was eligible, if that is how
18 you wanted to say it, for the death
19 penalty, but he chose life without
20 parole. We never had to come back for
21 the second phase.

22 Q. No second phase?

1 A. No, he pleaded, I don't know the legal terms.

2 He pleaded down more or less for life
3 imprisonment without chance of parole to
4 avoid the death penalty.

5 Q. Now, as the Judge indicated, the Defendant
6 here has been charged with a number of
7 crimes, and you indicated you had no
8 prior knowledge of this case, but you
9 watch 21 news on occasion for local news?

10 A. A lot of times my T.V. is always on, not
11 necessarily on local stations. I'm in
12 and out of rooms. I can't honestly say
13 that I watch the news.

14 Q. It may well be, if during the course of these
15 proceedings, somebody says something and
16 it jogs a recollection of something you
17 might have seen on T.V., or heard or
18 maybe glanced at it in the paper, you
19 would be able to set that aside and you
20 would be able to make your determination
21 based on what happens here in this
22 Courtroom?

1 A. Yes.

2 Q. It is the old concept of coming in with a
3 blank slate, whatever is going to be
4 written on that slate has to be written
5 in this Courtroom by the testimony of the
6 witnesses, the evidence and the
7 instructions by the Court. There are
8 four charges here. There are two counts
9 of aggravated murder. There's one person
10 who was killed, but there are two
11 theories of the killing. And the State
12 is allowed to do that and we have elected
13 to proceed under both theories, which
14 we're entitled to do.

15 Attached to the counts of aggravated
16 murder are some specifications, special
17 findings of fact that you are probably
18 familiar with from an earlier case. That
19 would make a Defendant eligible for the
20 death penalty as a punishment. And the
21 charges of aggravated murder, the first
22 is a charge of aggravated murder with

1 prior calculation and design. Sort of
2 like the old premeditation in a way, but
3 they changed it and now it requires some
4 planning and forethought.

5 A. I understand that.

6 Q. The second type of aggravated murder is with
7 purposeful killing and it is a felony
8 murder, that it occurs during the course
9 of an aggravated burglary and/or
10 aggravated robbery. And burglary is
11 where you go into a structure like a
12 dwelling house, and the Judge will define
13 those terms for you in some detail at the
14 end of the case. In short, basically it
15 is trespass in a dwelling house with the
16 intent to commit some type of offense
17 inside. And maybe the offender has a gun
18 or some weapon and somebody gets
19 seriously hurt inside.

20 The robbery, the aggravated robbery
21 is basically taking of property of
22 another by force or by threat. And

1 again, the offender might be armed with a
2 weapon and maybe the victim gets hurt in
3 that type of a case. But there's a
4 difference between breaking into the
5 house and taking stuff by force and by
6 threat. The specifications that are
7 attached to the counts of aggravated
8 murder, there are two of those. And the
9 first special finding is the aggravating
10 circumstance of an aggravated burglary,
11 that the aggravated murder was committed
12 during an aggravated burglary and the
13 Defendant committed the aggravated murder
14 with prior calculation and design. And
15 the second specification or special
16 finding is one of an aggravated robbery.
17 That the aggravated murder was committed
18 during an aggravated robbery and the
19 Defendant committed the aggravated murder
20 with prior calculation and design. You
21 understand that?

22 A. Yes.

1 Q. There are also two counts of -- two other
2 counts, aggravated burglary and
3 aggravated robbery. And attached to
4 those are special findings or
5 specifications that a working gun, a
6 firearm was used.

7 Now, the Defendant, the charge here
8 is the Defendant was a complicitor, not
9 the trigger person, not the person who
10 actually went into the house or stole the
11 car, but rather she's charged with
12 planning with another fellow by the name
13 of Nate Jackson in the aggravated
14 murdering of her ex-husband, Robert
15 Fingerhut for insurance money. And in
16 the course of this, the house was broken
17 into or trespassed in, and a car was
18 taken. Complicitor is somebody who
19 solicits or procures purposely another
20 person or aids and abets, helps,
21 encourages or strengthens the other
22 person in the commission of the offense.

1 Would it bother that she's charged as a
2 complicitor and that if you found her
3 guilty of aggravated murder with one or
4 more of the specification, she would be
5 eligible for the death penalty?

6 A. No, that was more or less the first case that
7 I was on was the same thing.

8 Q. Now, looking at your questionnaire, you are
9 generally in favor of the death penalty
10 for serious offenses?

11 A. Yes.

12 Q. And by serious offenses what do you mean?

13 A. If it is proven without a doubt that they
14 participated in the death of someone
15 else. And probably there are probably a
16 lot, some people in prison who don't
17 belong there, but I would think that the
18 majority who are convicted are rightfully
19 so convicted and I don't believe in an
20 eye for an eye in that sense, but I
21 believe that there are situations where
22 the death penalty would apply definitely.

1 Q. And to get to that point, you understand that
2 in the first phase, you and the other 11
3 jurors have to find beyond a reasonable
4 doubt that we proved the elements of the
5 charge of aggravated murder, and one or
6 more of these specifications.

7 A. I understand that.

8 Q. And then we go on to a second phase and
9 because the first phase is geared toward
10 the issue of guilt or non-guilt, you
11 wouldn't hear anything about what the
12 appropriate punishment would be in the
13 first phase, because it is not relevant.
14 And in the second phase, the issue there
15 would be the issue of what is the
16 appropriate punishment and then you have
17 to do this balancing test. I imagine,
18 you didn't get to that point in the other
19 trial, but you would be asked to balance
20 on one hand these aggravating, the
21 aggravating circumstance or aggravating
22 circumstances, and on the other hand, any

1 mitigating factors, things that could be
2 brought out in favor of the Defendant,
3 and that would mitigate against the death
4 penalty as a punishment.

5 You understand that the death
6 penalty is not an automatic punishment,
7 if you are found guilty of aggravated
8 murder with a specification? That
9 wouldn't be fair, because you wouldn't
10 hear anything about mitigation in the
11 first phase. And the Defendant has no
12 burden of proof at all. The burden of
13 proving the elements is entirely on us.

14 A. I understand that.

15 Q. Now, in the event that we don't convince you
16 by proof beyond a reasonable doubt that
17 the aggravating circumstance or
18 circumstances outweigh the mitigating
19 factors, then you would have to go on and
20 consider the three life sentences, life
21 without parole eligibility, life with 30
22 full years before parole eligibility, and

1 life with 25 full years before parole
2 eligibility.

3 A. I understand that.

4 Q. And you would be able to consider those three
5 life penalties equally, is that right?

6 A. Yes.

7 Q. All the penalties basically start out equally
8 until you would hear evidence, right?

9 A. Definitely.

10 Q. And how much weight you want to give to the
11 aggravating circumstances or the
12 mitigating factors, you understand that
13 is entirely up to you and the other
14 jurors?

15 A. Yes.

16 Q. You understand you can decide that those
17 circumstances or factors can have a whole
18 lot of weight, tipping the scale or they
19 could have about as much weight as a
20 feather, right?

21 A. Yes.

22 Q. Now you talked about proving beyond all doubt.

1 You understand that the burden here on
2 the State isn't proof beyond all doubt or
3 beyond the shadow of a doubt. It is
4 proof beyond a reasonable doubt, and
5 sometimes there are a lot of examples
6 that can be used. But one example is
7 filling up a box. And each juror, it
8 would be more than halfway, because as
9 soon as you get halfway full in the box
10 that would be like your civil case that
11 you decided, the preponderance of the
12 evidence. In a criminal case, beyond a
13 reasonable doubt, it would be pretty much
14 full, not all the way to the top, but
15 there would be enough stuff in there,
16 evidence, to convince you to a moral
17 certainty of the Defendant's guilt,
18 right?

19 A. I understand that.

20 Q. Using your reason and your common sense,
21 right?

22 A. Yes.

1 Q. You have heard that before?

2 A. Yes.

3 Q. And as a mother, you have to use your reason
4 and common sense in raising your family
5 and doing your job at work every day,
6 right?

7 A. Yes.

8 Q. So it is something you are used to doing.

9 Now, there are different types of
10 evidence that we can use in a case. You
11 are used to this from the other trials,
12 but there's the direct evidence that you
13 are familiar with where a witness can
14 come in and testify what he or she has
15 learned through the use of their five
16 senses. "I heard the gunshot and it was
17 loud. I smelled the smoke and it was
18 acrid. I touched the body and it was
19 cold."

20 But there's another round about
21 proof. Circumstantial evidence. Where
22 you are given a fact or sets of facts and

1 you can draw a logical deduction to
2 another set of fact or facts. You
3 understand that that would be necessary
4 in some cases because serious crimes are
5 usually not committed in public with a
6 whole lot of people around and the
7 Defendants don't always tell the whole
8 world exactly what they intend to do or
9 what they mean. They usually don't stand
10 out on the Courthouse step and say, "I am
11 going to kill so and so at such and such
12 a time." The State has to rely on
13 circumstantial or round about evidence
14 sometimes to give you circumstances.

15 Let me give a quick example of that.
16 Let's say you live in a two story house.
17 You go to bed at night, you look out
18 across the neighborhood from your bedroom
19 window and it is a beautiful night. The
20 moon is beaming, the stars are twinkling,
21 there's not a cloud in the sky. You draw
22 the blinds. You go to bed and before you

1 fall asleep, you listen to a weather
2 report and he says there's a cold front
3 moving in and we're going to get a storm
4 tonight. You turn off the radio and
5 sometime after that, you fall asleep.
6 And during the night you are awakened,
7 even though the blinds are drawn, you can
8 see a big flash of light outside and
9 distant booming, and maybe a couple of a
10 minutes later, there's a closer, big
11 flash of light outside, and closer in
12 time, boom, and then a couple of seconds
13 later, there's a great big flash outside.
14 And immediately after, there's a big boom
15 above the house, and you hear pitter
16 patter on the roof and then a steady
17 drumming sound and you fall back asleep.
18 Sometime later you awaken, go to the
19 window and open the blinds and you look
20 out across the neighborhood and it is a
21 beautiful day. The sun is beaming,
22 there's not a cloud in the sky, but the

1 streets are flooded with water. There's
2 water dripping off the leaves of the
3 trees, the roof tops, all the way across
4 the neighborhood are soaking wet and
5 there's puddles of water all over.
6 There's no fire hydrant nearby where any
7 car could have hit it and spurted water
8 up over the house. You know what
9 happened beyond a reasonable doubt during
10 the night, don't you?

11 A. Yes.

12 Q. What happened?

13 A. There was a thunder storm.

14 Q. And there's room in there for some possible or
15 imaginary doubt. You can imagine that
16 Alf and his Martian buddies flew by and
17 put on a sound and light show and
18 sprinkled the ground with some wet stuff
19 but that would be foolish or imaginary
20 doubt?

21 A. Yes.

22 Q. Even though you didn't see it with your own

1 eyes, there was a thunder storm?

2 A. I understand that.

3 Q. You understand that criminals aren't always
4 rocket scientists. Sometimes we get some
5 criminals who are silly or stupid. You
6 have probably read about the bank robber
7 who goes in with a stick-up note. It is
8 on the back of an envelope, hands it to
9 the teller, gets the money and flees and
10 leaves the note behind. And when you
11 turn the envelope over, there's the
12 robber's name and address, right?

13 A. Yes.

14 Q. Where the burglar who leaves his wallet
15 behind. You are aware that sometimes
16 criminals aren't the brightest people in
17 the world and we can prove our case, you
18 understand, by the circumstantial
19 evidence. Maybe if we got letters or
20 phone calls that would show what a person
21 was planning, right?

22 A. Yes.

1560

1 Q. Now, if we're able to convince you beyond a
2 reasonable doubt, let's say we get to a
3 second phase. You and the other jurors
4 have found the Defendant guilty of
5 aggravated murder with one or more
6 aggravating circumstances. And we go
7 through a second phase. And you find and
8 the other jurors find that the
9 aggravating circumstance or
10 circumstances, outweigh the mitigating
11 factors that are presented beyond a
12 reasonable doubt. So that the death
13 penalty under the law, would then be the
14 appropriate punishment. Would you be
15 able to sign that verdict form?

16 A. Yes.

17 Q. And when the Judge asks you in Open Court,
18 would you be able to say, yes, it was
19 your verdict?

20 A. Yes.

21 Q. You understand under our system, you can't
22 take notes.

1 A. Yes.

2 Q. Some places in the country, they let you take
3 notes, but in Ohio, we're not allowed.
4 The jurors aren't allowed to take notes.
5 And you have got to pay close attention
6 like you did in the other case. They
7 didn't let you take notes in the other
8 case, right?

9 A. No.

10 Q. You are stuck with the questions asked by the
11 lawyers. Some places, they let the Jury
12 submit the questions to the Judge to ask,
13 but because we're geared toward proving
14 elements, as lawyers, we're going to
15 focus our questions that way and there
16 may be some questions you might have that
17 may never get answered. For example, if
18 you had an interest in shoes, in footwear
19 like my wife does, you might wonder what
20 kind of shoes somebody was wearing. You
21 may never get to that, because it
22 wouldn't be relevant to these charges.

1 A. I understand that.

2 Q. Sequestration. You had that at the end of
3 your criminal case in the first phase?

4 A. One day, yes.

5 Q. And how long did it take the Jury in that case
6 to reach a verdict?

7 A. That was probably eight or nine years ago, so
8 we were there until late evening one
9 night and then they took us to dinner and
10 we went back to the rooms and I think the
11 next afternoon, I honestly can't
12 remember, but I am thinking we were there
13 four or five more hours, but I don't
14 really recall.

15 Q. Over a two day period?

16 A. Yes.

17 Q. Sequestration, that would occur, again at the
18 end of the first phase, and it would
19 occur at the end, if you got to a second
20 phase, it would occur at the end of the
21 second phase. And every Jury is
22 different. Some Juries may take a few

1 hours, some Juries may take a few days.
2 It depends. And you wouldn't have any
3 problem with that? You have been through
4 it before?

5 A. Yes. I live by myself and I do have dogs, so,
6 I could probably find something to do
7 with them, but I do live by myself. If
8 that would get really lengthy it could
9 make a problem.

10 Q. Do you have any friends that have dogs?

11 A. I do, yes.

12 Q. That could watch the dogs for a couple of
13 days?

14 A. They could come in the house or I have my
15 girlfriend who could take my bigger ones,
16 probably.

17 Q. How many dogs do you have?

18 A. Four.

19 Q. I have got two. What kind?

20 A. Two German Shepherds and two Yorkies.

21 Q. The Yorkies I imagine keep you pretty busy.
22 They get kind of active. During the

1 course of the trial, you are going to be
2 face to face with the Defendant. Perhaps
3 as her chair is turned towards you, you
4 will become more acquainted with her. My
5 question to you is this. When you go
6 back inside your Jury room to deliberate,
7 can you set aside all thoughts of
8 sympathy that you might have for the
9 Defendant and be conscientious in your
10 deliberations and base your verdict on
11 the evidence that you receive, the
12 testimony of the witnesses, and the
13 instructions of law, given to you by
14 Judge Stuard and lay aside all thoughts
15 of sympathy that you might have?

16 A. Yes.

17 Q. Are there any other pressing matters at home
18 or work other than your dogs that would
19 affect your ability to concentrate on the
20 evidence?

21 A. No.

22 Q. You understand that we have certain

1 obligations of citizenship. When it is
2 election time, we're called upon to cast
3 a ballot if we can, to learn as much as
4 we can about the issues and the
5 candidates. Another obligation would be,
6 if it is war time, we're called to serve
7 in the military and we have got young
8 people overseas right now, and in a
9 couple of places. And the third
10 obligation would be if we're summoned in
11 as jurors to serve as a juror if we're
12 able to, and you have done that twice
13 before.

14 A. Yes.

15 Q. Would you be willing to undertake that
16 obligation one more time in another most
17 serious type of cases to make sure our
18 system works?

19 A. Yes, I would. I have a Court date on May 22nd
20 for my divorce. I'm divorced and have
21 been divorced, but he's taking me back to
22 Court to reduce his spousal. I don't

1 know if that would interfere or be able
2 to be changed.

3 Q. If you are on here, I'm sure it could be
4 changed. But I wouldn't expect us to go
5 to May 22. I would be deeply concerned
6 if I'm here on May 22nd.

7 A. Okay. I wanted to mention that.

8 Q. It may take a while to pick a Jury, but we
9 should get a Jury by April 30th and trial
10 generally doesn't take -- it may take
11 forever to pick a Jury, but it is going
12 to take a week to two weeks at the most
13 to try the case, and maybe an extra
14 couple of days in the second phase.

15 A. Okay.

16 MR. BAILEY: Thank you very much.

17 EXAMINATION BY MR. INGRAM OF MS. BLACK:

18 Q. Good morning. My name is Jerry Ingram. John
19 Juhasz and I share the responsibility of
20 representing Donna Roberts, who is on
21 trial for her life. So we feel we should
22 take every reasonable precaution in

1 selecting a fair minded Jury, the same
2 type Jury that you or I would want if we
3 were on trial; does that sound fair
4 enough to you?

5 A. Yes.

6 Q. This is the only time during a trial where
7 lawyers and jurors can talk directly to
8 one another. Not only am I permitted to
9 ask you questions, but you are permitted
10 to ask me questions. And it is actually
11 far more important that you ask your
12 questions, than I ask mine. So if during
13 the course of this discussion, there's
14 something that pops into your mind, or
15 there's something you would like to
16 discuss with me, just tell me to hold up,
17 bring it to my attention and we'll try to
18 address that issue, okay?

19 A. Okay.

20 Q. As you know -- by the way, are you a lucky or
21 unlucky person? I'm trying to figure
22 that out. Three times for Jury duty?

1 A. That is what I said and I know people have
2 never been chosen.

3 Q. You know this is a lot like a job interview,
4 except when you go to be interviewed for
5 a job, you select the job that you are
6 applying for. Here the Jury wheel pulls
7 your name and in your case, I guess the
8 Jury wheel just keeps pulling and
9 pulling. We're interviewing you today
10 for one of the most important jobs there
11 is. The job of finding the truth and
12 determining the fate of another human
13 being.

14 Now not every one is up to that. We
15 have already had some people tell us that
16 they thought the responsibility was just
17 too much for them. So my first question
18 to you is how do you feel about being
19 asked to assume that responsibility and
20 in your case, not once, but twice?

21 A. I would accept that.

22 Q. I am a little confused by your prior criminal

1 juror experience in 1994. You went
2 through the Voir Dire process. Was it
3 individual or was it a group process at
4 that time, do you remember?

5 A. I believe it was individual.

6 Q. Do you remember what Courtroom that was in?

7 A. I think it was at the other end of the hall,
8 whatever one that is.

9 Q. You started the trial, heard evidence during a
10 first phase?

11 A. Yes.

12 Q. Did you actually render a verdict at the end
13 of that first phase?

14 A. Yes.

15 Q. Then you never started a second phase?

16 A. No. We were supposed to come back and I
17 forget the time, like in a three month
18 period to come back and I believe the
19 bailiff who called and said that he
20 decided to take life in prison without a
21 chance of parole, to avoid the death
22 penalty. So I never came back for the

1 second phase.

2 Q. As you know, the job responsibility of a trial
3 juror is to fairly determine the facts of
4 any case?

5 A. Yes.

6 Q. Your job responsibility now is to tell us if
7 you have any problem giving either side a
8 fair shake?

9 A. No.

10 Q. I'm going to ask you some hard questions. And
11 I am candidly going to admit to you, that
12 if you were asking me the same questions
13 I'm asking you, they would be hard for
14 me. What I really want you to understand
15 about that, there are absolutely no right
16 or wrong answers. The only mistake you
17 could possibly make is if you tell me
18 what you think I wanted to hear.

19 A. I understand that.

20 Q. Rather than how you honestly feel. Mr. Bailey
21 talked to you about complicitors, aiders
22 and abettors?

1 A. Yes.

2 Q. In a nutshell this case boils down to the
3 Government's allegation that Donna
4 Roberts plotted or conspired with a male
5 companion, Nate Jackson, to cause the
6 death of Robert Fingerhut. Donna and
7 Robert Fingerhut were divorced, but
8 continued to work together at the
9 Greyhound bus station in Youngstown and
10 Warren, and also continued to live
11 together in Howland Township. You
12 understand that this trial is about the
13 guilt or innocence of one person and one
14 person only?

15 A. Yes.

16 Q. And that person is Donna Roberts?

17 A. Yes.

18 Q. Now, the State of Ohio alleges that she's a
19 complicitor and an aider and abetter.
20 Basically, a helper. You going to hold
21 them to their burden of proving that?

22 A. To the point where they can convince us of it,

1 yes.

2 Q. Because that's what this is all about,
3 correct?

4 A. Yes.

5 Q. In support of its allegations that Donna aided
6 or participated in the death of Robert
7 Fingerhut, the State will present various
8 letters and recorded conversations
9 between Donna and Nate Jackson. Now, I
10 have to tell you that some of that
11 evidence, some of those letters, those
12 recorded conversations, are sexually
13 explicit. And to be honest with you,
14 down right offensive. You understand
15 that the allegation here is murder, not
16 loose morality?

17 A. Yes.

18 Q. You also understand that no matter how shocked
19 or offended you may be by the sexual
20 nature of this evidence, you are still
21 going to have to test the evidence to
22 determine whether it ties Donna to the

1 offense. Can you do that?

2 A. Yes.

3 Q. Donna denies that she participated by
4 conspiracy, plot or otherwise, in the
5 murder of Robert Fingerhut. Would you
6 have a problem giving a scarlet woman a
7 fair trial?

8 A. No.

9 Q. Would you have the courage to acquit, that is
10 vote for not guilty, if you thought a not
11 guilty verdict was supported by the
12 evidence?

13 A. No.

14 Q. When you came here last Tuesday and you met
15 down at the other end of the hall, down
16 there, did anything happen there that
17 jogged your recollection as to anything
18 you may have seen, read or heard about
19 this case?

20 A. I know absolutely nothing about it before
21 then.

22 Q. Did anything happen in that room that caused

1 you any concern whatsoever?

2 A. No.

3 Q. It is extremely important that trial jurors
4 avoid as best they can, because sometimes
5 it is hard and sometimes it is not
6 possible, but they must avoid as best
7 they can exposure to news coverage?

8 A. I understand that.

9 Q. And the best example I have of that and I hate
10 to ever mention his trial, and that is
11 O.J. Simpson. Every night you turn on
12 the T.V., and there would be some high
13 flautin Prosecutor and then right next to
14 him is a high flautin Defense lawyer.
15 And they put a different spin or
16 interpretation on the evidence. A juror
17 shouldn't be exposed to that, it might
18 affect him; do you understand that?

19 A. Yes.

20 Q. You see it is the same in this case?

21 A. Yes.

22 Q. It is so important that the Judge even asked

1 you to sign a written document; do you
2 recall that?

3 A. No.

4 Q. I believe that there's a piece of paper like
5 this that you signed. If you haven't
6 been asked to sign it, you will be asked
7 to sign it. But the bottom line is, you
8 will do your best to avoid exposure to
9 the newspaper?

10 A. Yes.

11 Q. And you understand why we ask you to do that?

12 A. Yes.

13 Q. And even trial jurors are told to keep an open
14 mind, that is, not form any impression
15 about the facts of the case until the
16 case is over. And the reason for that
17 is, if you form an opinion or an
18 impression early on, it might stop you or
19 prevent you from objectively listening to
20 the rest of the evidence as the case
21 unfolds.

22 A. I understand that.

1 Q. And will you do your best to avoid forming any
2 early impressions?

3 A. Yes.

4 Q. As you know, this is a capital case, and we're
5 required to learn your feelings regarding
6 the death penalty and life imprisonment
7 as sentencing options. But before I go
8 there, I want to explain to you a concern
9 that I have. I don't want you to get the
10 idea that just because I'm standing up
11 here talking to you about punishment,
12 that I am predicting that you are going
13 to have to decide the issue of
14 punishment. Do you understand that?

15 A. Yes, I do.

16 Q. I am a lawyer, I'm not a fortune teller. No
17 one here is predicting that we're going
18 to get to a second phase. Do you
19 understand that?

20 A. Yes, I do.

21 Q. The law requires that we ask you these
22 questions now and that is why we're doing

1 it. To me and maybe I just look at
2 things a little differently, but to me it
3 seems like putting the cart before the
4 horse. You understand what I mean by
5 that? We're talking about punishment,
6 when actually in my mind, we should be
7 talking about guilt or innocence?

8 A. I understand.

9 Q. No punishment is ever appropriate for an
10 innocent person, is that right?

11 A. Definitely.

12 Q. You understand that this is potentially and
13 only potentially a two phase process?

14 A. Yes.

15 Q. If the Jury returns a not guilty verdict at
16 the first phase, what happens?

17 A. There's not a second phase. There's no reason
18 for it.

19 Q. I'm going to talk to you about a second phase.
20 But when I talk to you about a second
21 phase, it is not even in this case. I am
22 making up some second phase in some

1 imaginary case.

2 A. Okay.

3 Q. Whenever a Jury starts a second phase in a
4 capital trial, they are to consider four
5 sentencing options. And you think you
6 have a handle on those four options?

7 A. Yes.

8 Q. Do you understand that life without parole is
9 indeed without parole?

10 A. Yes.

11 Q. You don't get out and the other two, the 25
12 and the 30 year eligibility, you do day
13 for day?

14 A. Yes.

15 Q. And you understand that in our imaginary
16 second phase, it is the jurors'
17 responsibility, upon their oath, to
18 consider all four of those equally with
19 an open mind?

20 A. Yes.

21 Q. And that not one punishment cannot start with
22 a head start or a jump start over the

1 others, do you understand that?

2 A. Yes, I do.

3 Q. How do you feel about life imprisonment as an
4 alternative to the death penalty in a
5 premeditated murder case where it is
6 proven to you, and I'm going to use your
7 words, beyond all doubt. We know that
8 that is not the burden here and we'll
9 talk about that. But you are a juror in
10 an imaginary case that has convicted the
11 Defendant of premeditated, which is
12 advanced planning murder, and in your
13 mind not only has the State met its
14 burden of proof beyond a reasonable
15 doubt, but the State has met a burden of
16 proof beyond all doubt. Now in that
17 case, or in such a case, how do you feel
18 about the death penalty as the life
19 imprisonment as an alternative for the
20 death penalty?

21 A. I more or less, with the death penalty,
22 naturally you are taking a life, but life

1 imprisonment is also probably in some
2 people's eyes as bad. It is life in
3 prison period. The only difference is
4 that person would not be suffering by
5 being in prison.

6 Q. Have you ever heard anybody say to you that,
7 "I don't like this idea of life
8 imprisonment, because I am a tax payer
9 and I shouldn't have to pay to house
10 people." What is your opinion of that
11 argument?

12 A. I think sometimes I could agree with them
13 because our prisons are so full of
14 people, but I don't think the alternative
15 is to execute people because of lack of
16 room or because of taxpayers. I think
17 sometimes they have too much comfort, not
18 that they should be uncomfortable in
19 prison, but I mean, sometimes they have
20 too much comfort. And maybe I don't know
21 what prisons are really like, but just
22 what you read and hear about.

1 Q. Have you ever considered a political
2 candidate's views on capital punishment
3 in determining whether or not to vote for
4 that candidate?

5 A. No.

6 Q. Recently in this country, we have been having
7 some renewed debate about whether we as a
8 nation should have a death penalty.
9 There was a moratorium put on executions
10 in the State of Illinois and the Supreme
11 Court recently decided a case prohibiting
12 executions of the mentally impaired.
13 Have you seen or heard anything about
14 that debate?

15 A. No.

16 Q. In your questionnaire, you indicate that you
17 have expressed an opinion either in
18 conversation or debates about the death
19 penalty, and that you were usually in
20 favor. I take it that sometimes you were
21 not, but in favor -- but usually you
22 were?

1 A. Yes.

2 Q. Is that accurate?

3 A. Yes.

4 Q. Can you tell me what separates those occasions
5 when you were not in favor, from those
6 occasions when you were in favor?

7 A. I would think it would be the degree of the
8 crime.

9 Q. What do you mean by the degree?

10 A. There's been so many children kidnapped lately
11 and so many abuse cases like that, and I
12 just don't think that that person, if
13 they have taken a child's life or an
14 innocent person's life in different
15 situations, should be allowed to continue
16 life in prison.

17 Q. In your personal view, a child victim is a
18 significant aggravating circumstance?

19 A. Definitely, I think.

20 Q. So do I.

21 A. Probably somebody who has lost a loved one to
22 murder, of 40 years old, wouldn't have

1 that same opinion, but I don't have those
2 situations. I don't even have a child
3 situation like that, but thinking about
4 children, it would be more of a severe --
5 and how do you say, because of age, one
6 is more severe than the other, but that
7 is my thoughts.

8 Q. Did I also hear you use the words innocent
9 victim? I thought I did.

10 A. Possibly.

11 Q. You understand whenever anyone loses their
12 life because of a murder, they are an
13 innocent victim?

14 A. Definitely.

15 Q. By the way, how old are your boys, 28 and 26?

16 A. Yes.

17 Q. Can you give me some gratuitous advice? I
18 have 21 year old and 18 year old. How
19 did you manage the teen years?

20 A. The oldest one gave me a run for my money.

21 Q. Jason is a policeman in Atlanta?

22 A. Yes.

1 Q. You admire him and we all admire police
2 officers, because they protect us and
3 they put their lives on the line?

4 A. Definitely.

5 Q. I'm not so sure that we -- and by we, I mean
6 society as a whole really appreciate what
7 they do on a daily basis?

8 A. Absolutely agree.

9 Q. But in this case and in most criminal cases,
10 you are going to hear the testimony of
11 one or more police officers.

12 A. I understand that.

13 Q. And you will have to determine whether you
14 believe those police officers just as you
15 have to determine whether you believe
16 other witnesses. Are you going to
17 believe a police officer just because
18 he's a police officer?

19 A. No.

20 Q. Would you agree with me that the uniform
21 doesn't make the man? What you are going
22 to have to do is see past the uniform and

1 evaluate the testimony of the man wearing
2 the uniform?

3 A. Absolutely.

4 Q. And police officers are human just like you
5 and I?

6 A. Definitely.

7 Q. They have the same limitations. They make the
8 same mistakes and they have the same
9 interests.

10 A. Definitely.

11 Q. You will judge the testimony of police
12 witnesses just as you will everyone else?

13 A. Yes.

14 Q. In our made up second phase, you understand
15 that the Jury will be called upon to
16 determine a sentence and that you will be
17 given guidelines?

18 A. Yes.

19 Q. You will be told about aggravating
20 circumstances and mitigating factors?

21 A. Yes.

22 Q. And you will have to balance those, and you

1 can only vote for death if you are
2 satisfied beyond a reasonable doubt that
3 the aggravating circumstances outweigh
4 the mitigating factors, and that death is
5 the appropriate penalty?

6 A. I understand that.

7 Q. Will you hold the State of Ohio to that burden
8 of proof if there ever is a second phase?

9 A. Yes.

10 Q. When you are weighing evidence, that is the
11 Jury's job, right?

12 A. Yes.

13 Q. So basically, in terms of weight, what weight
14 to give those mitigating factors -- if
15 you hear mitigating factors, the buck
16 stops with you, correct?

17 A. It is up to the attorneys to prove the cases,
18 but yes.

19 Q. This is not a trick question. I want to make
20 sure that we're on the same page. Whose
21 burden is it to prove that death is the
22 appropriate punishment?

1 A. I think it is the attorneys place to prove to
2 give us the information to work on to
3 come to a conclusion.

4 Q. However, we have two different attorneys here.
5 We have four attorneys. Mr. Juhasz and I
6 are Defense attorneys, and Mr. Becker and
7 Mr. Bailey are Prosecutors. So, who
8 bears the burden in an imaginary second
9 phase of convincing the Jury that death
10 is the appropriate penalty?

11 A. The Prosecutor.

12 Q. And you will hold these two guys to their
13 burden if you ever have to decide the
14 issue of punishment?

15 A. Yes.

16 Q. Have you ever donated any time, money or
17 services to a political campaign or
18 issue?

19 A. No.

20 Q. Do you belong to any group or organization
21 which is active in any political matter?

22 A. No.

1 Q. In the last five years, have you signed a
2 petition on any public issue?

3 A. No, not that I can recall, no.

4 Q. Do you belong to or associate with any group,
5 which has crime prevention or law
6 enforcement as a goal? And by that, I
7 mean neighborhood block watch, MADD,
8 SADD, anything like that?

9 A. No.

10 Q. Mr. Bailey talked to you about sympathy and he
11 asked you if you could decide this case
12 and set aside all sympathy for Donna
13 Roberts and you should do that, you
14 understand that?

15 A. Yes.

16 Q. But there's a flip side to that. Whenever
17 someone unexpectedly loses his life, it
18 is natural to feel sympathy for that
19 person, correct?

20 A. Probably.

21 Q. Well, if you suddenly and unexpectedly lost
22 your life because somebody takes it from

1 you, it is natural to feel sympathy?

2 A. Yes.

3 Q. And you will have to decide this case, setting
4 aside natural feelings of sympathy for
5 Robert Fingerhut. Can do you that?

6 A. Yes.

7 Q. That may be easier said than done, and we
8 actually ask jurors to do all kinds of
9 things that are easier said than done.
10 And I say that it is easier said than
11 done because you are going to see
12 evidence, you are going to hear evidence.
13 You will see photographs of gunshot
14 wounds. And one of these wounds is point
15 blank right in the back of the head.
16 Coroner's photographs, some of them may
17 be enlarged. And this evidence may evoke
18 an emotional response from you, sympathy
19 or anger. Even though evidence evokes an
20 emotional response from you, you are
21 going to have to test that evidence to
22 see if the evidence ties Donna to this

1 offense. Do you think you are up to
2 that?

3 A. Yes.

4 Q. How do you feel personally about the rule of
5 law which says that jurors are to presume
6 a Defendant innocent?

7 A. You can have mixed feelings there, but I think
8 that is only fair that you should prove
9 that the person is guilty. It would
10 probably be harder to prove that the
11 person is innocent, if in our country
12 that they were guilty from the start.

13 Q. Either countries do it that way -- France,
14 some of the European countries. What
15 separates our heritage and obviously our
16 heritage involves the English heritage,
17 from basically the rest of the world is
18 the Bill of Rights, and the Constitution
19 and a fundamental precept is the
20 presumption of innocence. Not everybody
21 agrees with it. And I have some friends,
22 they are actually good friends, who like

1 you, see an increase in the crime
2 problem. And they would actually do away
3 with the presumption of innocence and
4 replace it with a presumption of guilt.
5 How do you feel about that?

6 A. I don't think that is right. I don't know
7 what the solution is to reduce crime, but
8 I don't think that would do it.

9 Q. Why don't you think for a second and tell me
10 if you have any ideas about what we, and
11 by we I mean society as a whole, might be
12 able to do to increase the -- to decrease
13 the crime problem that we have been
14 talking about?

15 A. I have absolutely no idea, but other countries
16 don't have it. I don't know if I read
17 correctly, Canada has had so many
18 killings opposed to just in Youngstown
19 and here, I don't understand what they
20 are doing different than us. I don't
21 know what the solution is for that.

22 Q. I sense from what you are telling me that you

1 have actually devoted some thought to the
2 issue, but you have been unable to arrive
3 at any answer?

4 A. I wouldn't say that I got in deep thought
5 about it. I think anybody would think,
6 what can you do to decrease crime. I
7 don't know what you can do to decrease
8 crime.

9 Q. You understand that your oath as a juror would
10 require that you afford Donna the full
11 benefit of the presumption of innocence?

12 A. Yes.

13 Q. Let's talk about that a little differently.
14 If one of your boys were accused of some
15 wrongdoing and you, in your heart,
16 honestly felt that he didn't do it, you
17 would require evidence before you would
18 be willing to change your mind, wouldn't
19 you?

20 A. Yes, definitely.

21 Q. You would be presuming your son innocent in
22 that circumstance?

1 A. Yes.

2 Q. It's the same here, do you understand that?

3 A. Yes.

4 Q. And in that situation where your son was
5 accused of wrongdoing, I imagine you
6 wouldn't willy nilly accept that evidence
7 at face value. You might look at it with
8 a critical or jaundiced eye to make sure
9 it really says or says what it is
10 supposed to mean. Will you do that here?

11 A. Yes.

12 Q. Because of the presumption of innocence, the
13 State has the burden of proof. Let's go
14 back to our conversation about the
15 presumption of innocence for a moment.
16 And again, this is a trick question. If
17 we were to replace the presumption of
18 innocence with a presumption of guilt,
19 who would have the burden of proof?

20 A. You would.

21 Q. That is right. But that is not the way we do
22 things in this country, and you believe

1 in that?

2 A. Yes.

3 Q. So you are going to hold these fellows to
4 their burden of proof?

5 A. Yes.

6 Q. Because that is what your oath requires you to
7 do?

8 A. Yes.

9 Q. And if you think at all that you are going to
10 have a problem with that, now is the time
11 to tell us. I don't think you are.

12 A. No, you have to follow the laws of the Court
13 and that was the same situation with the
14 first trial I was on. Not to reflect
15 back on that, we were never positive that
16 he shot that person, but if I understood
17 the laws of the Court correctly, if we
18 could place him within that area of that
19 gun at any time, you have to prove one
20 way or the other. You have to come to a
21 conclusion by the laws of the Court one
22 way or another.

1 Q. Let's talk about that. I'm not so sure that I
2 agree with the principle of law, which
3 you have just described, but I don't have
4 to agree with it. But in this case, your
5 law, the law that you will apply, comes
6 from one Judge and one Judge only and
7 he's sitting right there.

8 A. I understand that.

9 Q. Whatever that Judge in that other case may
10 have told you does not apply here?

11 A. I understand that totally.

12 Q. You can separate those things from your mind?

13 A. Definitely.

14 Q. You understand that Donna is on trial for
15 murder, not for being a woman of loose
16 moral character?

17 A. Yes.

18 Q. And while the State may prove that Donna was a
19 loose woman, their burden of proof in
20 this case is to prove that she
21 intentionally participated in the death
22 of Robert Fingerhut?

1 A. Okay.

2 Q. Will you hold the State to that burden?

3 A. Yes.

4 Q. Mr. Bailey talked to you about essential
5 elements. There's two aggravated murder
6 charges. You think you have a handle on
7 that? There's two aggravated murder
8 charges. One is premeditated murder --
9 actually it is now called prior
10 calculation and design. The essential
11 elements are venue, which is that it
12 happened here -- identity, purposely
13 caused the death of Robert Fingerhut,
14 with prior calculation and design?

15 A. I understand that.

16 Q. Then there's another count of aggravated
17 murder, which is felony murder, purposely
18 caused the death of Robert Fingerhut,
19 while in the commission of an aggravated
20 burglary or aggravated robbery.

21 A. I understand that.

22 Q. You understand that purpose is an essential

1 element of both of the murder charges?

2 A. Yes.

3 Q. And I believe the Judge will tell you at the
4 end of the case, that purpose is the same
5 as intent. A person acts purposely if it
6 is his specific intention to cause a
7 specific result. Would you agree with me
8 that the facts and circumstances
9 surrounding an act, can shed some light
10 on the actor's intent?

11 A. Yes.

12 Q. For instance, if you do something and you
13 leave a paper trail all over the place,
14 it is less likely that your objective is
15 unlawful as opposed to covering your
16 tracks; does that make sense to you?

17 A. Yes.

18 Q. Or another way of looking at it, I guess. If
19 you do something in broad daylight out in
20 the open in the presence of others, it is
21 less likely your objective is unlawful as
22 opposed to doing it in secret under cover

1 of darkness?

2 A. I understand that.

3 Q. The third count in the indictment is the
4 aggravated burglary count. That is also
5 the first death specification to the two
6 aggravated murder counts. Are you with
7 me there?

8 A. Yes.

9 Q. And when Mr. Bailey told you the essential
10 elements of aggravated burglary, do you
11 recall hearing the word "trespass"?

12 A. Yes.

13 Q. And I think the Judge will define trespass as
14 to enter or remain on the land or
15 premises of another. Will you hold the
16 State to their burden of proving
17 trespass?

18 A. Yes.

19 Q. The fourth count is aggravated robbery, which
20 is in committing or attempting to commit
21 a theft offense, someone had a deadly
22 weapon on or about their person.

1 A. Okay.

2 Q. And a theft offense necessarily involves the
3 taking or an attempt to take the property
4 of another, right?

5 A. Yes.

6 Q. Will you hold the State to their burden of
7 proving that there was an intended theft
8 offense?

9 A. Yes.

10 Q. And that aggravated robbery charge is the
11 second death specification to the two
12 counts of the indictment. We have talked
13 about how we ask jurors to do hard
14 things.

15 A. Yes.

16 Q. And sometimes we ask them to do unnatural
17 things, because in our daily lives,
18 whenever we're called upon to resolve a
19 dispute, the first thing we ever say,
20 either to ourselves or to the people
21 involved in the dispute is, "Whoa, let me
22 get both sides of the story."

1 A. Yes.

2 Q. In this case, your oath as a juror may require
3 you to put aside that natural
4 inclination, because you understand,
5 Donna doesn't have to testify.

6 A. I do.

7 Q. If she were to elect not to testify, how would
8 you feel about that?

9 A. I don't think I would have an opinion on that.
10 That is her right.

11 Q. If she does testify, you understand she's a
12 witness just like any other witness. We
13 talk about determining the credibility of
14 police officers.

15 A. Yes.

16 Q. The same rules and standards that you employ
17 to determine the credibility, the
18 believability of policemen, any other
19 witness, would apply to Donna Roberts.
20 You should take the same rules, the same
21 standards and apply them to every witness
22 that testifies.

1 A. Yes.

2 Q. You feel that because a Defendant and the case
3 is a Defendant, that there ought to be
4 some special qualification on her
5 testimony or his testimony?

6 A. No.

7 Q. Let me be fair about this. She's the
8 Defendant, right?

9 A. Yes.

10 Q. She does have an interest or a stake in the
11 outcome of these proceedings.

12 A. Yes.

13 Q. And that is obviously something you had wanted
14 to keep in mind, isn't it?

15 A. Yes.

16 Q. So to do it the right way, you would take that
17 factor, interest or stake in the outcome,
18 and you would apply it to Donna, you
19 would apply it to the policeman, you
20 would apply it to every witness that
21 testifies, if it applied. Will you do
22 that?

1 A. Yes.

2 Q. I don't want to spend a lot of time on the
3 fact on an indictment, but this case
4 began with the filing of an indictment.
5 And an indictment is not evidence, and
6 merely informs the Defendant of the
7 nature of the allegations leveled against
8 him or her. You got me?

9 A. Yes.

10 Q. The Judge told you in the orientation
11 instructions and I believe in the
12 preliminary instruction, that the
13 indictment is not evidence. Did you know
14 that Grand Jury proceedings were secret?

15 A. No.

16 Q. They are. And when this case went to the
17 Grand Jury, Donna was not there. I was
18 not there. Mr. Juhasz was not there. We
19 didn't even know it was scheduled. So
20 there was no opportunity to test the
21 evidence presented to the Grand Jury.
22 You understand that?

1 A. Yes.

2 Q. And the Grand Jury, they just decided that,

3 "Well, yes, there's reasons she should
4 stand trial, and we're going to leave the
5 hard decisions to another Jury." That is
6 your job. You understand where the role
7 is different?

8 A. Yes.

9 Q. The evidence is different?

10 A. Yes.

11 Q. And this indictment will be read to you, and
12 referred to throughout the course of the
13 trial. What I want you to understand is
14 no matter how many times it is read to
15 you, no matter how many times it is
16 referred to, it does not magically become
17 transformed into evidence. Do you
18 understand me?

19 A. Yes.

20 Q. As you know, because of your prior
21 involvement, one of the big job
22 responsibilities of the trial Jury is to

1 determine the credibility of the
2 witnesses. The Judge will tell you, you
3 can believe all of what a witness says,
4 part of what a witness says, none of what
5 a witness says. And the Judge will give
6 you a set of standards to help you do
7 that, and you should apply those
8 standards to each and every witness that
9 testifies. Will you do that?

10 A. Yes.

11 Q. But he's going to give you one standard called
12 the test of truthfulness, which you apply
13 in your every day life. And working at
14 the bank, you frequently have to
15 determine whether a coworker or when you
16 were a teller, whether a customer was
17 being straight up with you or trying to
18 hoodwink you?

19 A. Yes.

20 Q. And over the years, you developed a sort of
21 sixth sense or an intuitive way of doing
22 that.

1 A. Yes.

2 Q. Whatever that sixth sense or that intuitive
3 way is, we don't want you to leave it out
4 there at the Courtroom door. You are
5 supposed to bring it in here, and apply
6 it to everyone that testifies. Will you
7 do that?

8 A. Yes.

9 Q. You do understand, by the way, the green
10 Martians and sound and light shows have
11 nothing to do with this case?

12 A. Yes.

13 Q. We're talking here about proof beyond a
14 reasonable doubt. Do you ever say to
15 yourself, I'm going to give him -- maybe
16 one of the boys, the benefit of the
17 doubt?

18 A. Definitely.

19 Q. Well, did you ever say to yourself, I'm sure
20 you did, that you never said I'm going to
21 give him the benefit of an unreasonable
22 doubt, did you?

1 A. No.

2 Q. It sounds silly, but my point is this. I
3 think we all intuitively know what is
4 reasonable from what is unreasonable.

5 A. Yes.

6 Q. Does that make sense to you?

7 A. Yes.

8 Q. The Judge will tell you that proof beyond a
9 reasonable doubt requires that you be
10 firmly convinced of the allegation, and
11 is proof of such a character that an
12 ordinary person would be willing to rely
13 and act upon it in the most important of
14 his or her own affairs. That is a
15 definition you have heard before?

16 A. Yes.

17 Q. We're all called upon to, in our lives, to
18 make important decisions and you have
19 obviously made important decisions.
20 Sometimes we actually make a check list.
21 Either some people actually do it on
22 paper, some people do it in their mind's

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1 eye, put a line and they put the positive
2 things, the favorable things on one side,
3 and the bad things, the negatives on the
4 other side. And what I do in that
5 situation is I look at the negatives,
6 because if I can scratch off the
7 negatives, I know I'm making the right
8 decision.

9 A. Okay.

10 Q. Are you with me?

11 A. Yes.

12 Q. And if you are exploring negatives and you
13 start scratching them, because they are
14 unreasonable, because your investigation
15 leads you to conclude that it won't
16 happen, let's say it is a house, you are
17 buying a house and you are worried about
18 the structural stability of the house.
19 You call in a termite inspector, you call
20 in an engineer, and you scratch that.
21 But there's a nagging doubt about whether
22 or not, let's say you can make the

1 mortgage payment. Or I have not bought
2 homes, because I was concerned whether I
3 could make the mortgage payment. And go
4 to the bank, see if I can get a lower
5 rate. I try to come up with more of a
6 down payment. No matter what I do, I
7 cannot scratch that doubt from the
8 negative side. It remains reasonable.
9 If there's one negative doubt on the
10 negative side, I cannot say to myself
11 beyond a reasonable doubt that that
12 decision is the right thing for me. Do
13 you understand that?

14 A. I understand that.

15 Q. And that is proof beyond a reasonable doubt?

16 A. Yes.

17 Q. And Mr. Bailey is right. The State of Ohio
18 can attempt to meet its burden by using
19 direct evidence and circumstantial
20 evidence. I think you understand what
21 circumstantial evidence is, don't you?

22 A. Yes.

1 Q. Let's talk number one, about the example
2 Mr. Bailey gave you. It is nighttime.
3 You hear the pitter patter as he said of
4 rain on the roof. You hear the clap of
5 thunder. You see the flash of lightning.
6 That is direct evidence of all of those
7 things?

8 A. Yes.

9 Q. Because you are hearing rain, right?

10 A. Yes.

11 Q. You do see the lightning?

12 A. Yes.

13 Q. Or the flash from the lightning and you do
14 hear the thunder, but you don't see the
15 rain storm itself. So that is a
16 reasonable assumption, under the
17 circumstances, when you get up in the
18 morning, that it rained?

19 A. Definitely.

20 Q. Let's change this a little bit. On Sunday
21 mornings, I like my Sunday paper. So I
22 might be upstairs and because I smoke too

1 much, I would have a cigarette in one
2 hand and a cup of coffee in another. I
3 look out the window and I want to see if
4 the paper boy is in sight and I don't see
5 the paper boy, but I see footprints in
6 the snow from my neighbor's house to my
7 front door, from my front door to the
8 other neighbor's house. So, I infer,
9 because that is what is circumstantial
10 evidence is, an inference that my paper
11 is at the front door. I go downstairs, I
12 open the door, I go to get my paper, and
13 low and behold, there are my Kroger
14 coupons, my Giant Eagle coupons. It's
15 not my newspaper, it is the grocery store
16 coupons. You have to test the inferences
17 that you are asked to make. Do you
18 understand that?

19 A. Yes.

20 Q. And let's go back to the presumption of
21 innocence with your children, where they
22 may have been accused of some wrongdoing

1 and I made that up. I'm not saying they
2 were really accused. But in that
3 situation, if you were asked to make
4 inferences, certainly you would number
5 one, test the inference, wouldn't you?

6 A. Yes.

7 Q. Make sure it is reasonable?

8 A. Yes.

9 Q. Because an inference after all is a leap in
10 logic, right?

11 A. Yes.

12 Q. And if the leap isn't logical, if the leap
13 isn't reasonable, that leap shouldn't be
14 made; you agree with that?

15 A. Yes.

16 Q. In a situation where you are asked to make
17 leaps in logic with someone that you
18 honestly feel to be innocent, you would
19 look for alternative leaps, wouldn't you
20 or other inferences, like with my coupon
21 scenario.

22 A. I understand what you are saying, yes.

1 Q. Will you do that in this case?

2 A. Yes.

3 Q. So you will test the circumstantial evidence
4 and all inferences that you are asked to
5 make?

6 A. Yes.

7 Q. And would you agree with me that
8 circumstantial evidence is basically like
9 a chain? It can only be as strong as its
10 weakest link?

11 A. Probably, yes.

12 Q. Will you look for weak links?

13 A. Yes.

14 Q. I have been up here quite long enough and if I
15 have tried your patience, I humbly
16 apologize, but is there anything that has
17 come to your mind that you would like to
18 ask any of us here or discuss with us?

19 A. No.

20 Q. Now that I have asked you that question,
21 something has popped into my mind. Your
22 dogs. Have you tried to make

1 arrangements, have you forwarned anyone
2 that you may need someone to take care of
3 your dogs?

4 A. I have mentioned it at work.

5 Q. And has someone indicated that they would be
6 able to help you out? Let me tell you,
7 if we're going to have a problem with
8 that, we really should know it now. I
9 have should have asked you that question
10 first off.

11 A. I originally thought I would have a problem
12 with that, but I know that where I got my
13 German Shepherd, she would take them if
14 she needed to, and my smaller ones
15 probably wouldn't be a problem for anyone
16 to come in and let them out through the
17 day.

18 MR. INGRAM: Thank you.

19 (SIDE BAR DISCUSSION, OFF THE RECORD AND
20 OUT OF HEARING)

21 THE COURT: Miss Black, you will be
22 in the pool from which this Jury is selected. You

1 should call that number next Friday evening after
2 4:30 for further instructions. We should have a
3 pool together by then, so that following week we'll
4 try to pick the Jury in this matter. I would again
5 remind you not to discuss anything, or read
6 anything. Thank you.

7 Both Plaintiff, Prosecution and the
8 Defense have passed for cause on this last lady,
9 Miss Black?

10 MR. BAILEY: Yes, Sir.

11 MR. JUHASZ: Yes, Sir.

12 (Court in recess at 10:50 a.m.)

13 (Resumed in Open Court at 11:20 a.m.)

14 (Juror No. 76, Panda Heatherly-Lantz, entered the
15 Courtroom.)

16 THE COURT: Miss Lantz, you have
17 read the handout that was given to you?

18 MS. LANTZ: Yes.

19 THE COURT: You have a pretty good
20 idea of why we're here. The purpose of the
21 individual questioning is to inquire in two areas.
22 Nothing to be nervous about.

1 MS. LANTZ: I had ear surgery
2 yesterday on this ear.

3 THE COURT: Are you okay?

4 MS. LANTZ: Yes.

5 THE COURT: As you know, Donna
6 Roberts is charged with two counts of aggravated
7 murder with specifications. Under Ohio law, a
8 person who commits murder does not necessarily face
9 the death penalty, it is only under certain
10 circumstances. Miss Roberts has specifications as
11 to that indictment that places that with the
12 possibility for the Jury to consider. The State is
13 called upon to try this case, present evidence and
14 after the Jury reviews the evidence, according to
15 the law which will be given, they are called upon
16 to determine the guilt or innocence of Miss
17 Roberts. If they found that she's not guilty, then
18 that would be the end of the trial.

19 If they return a finding of guilty,
20 however, the matter will go on to a second hearing.
21 At the second hearing, the State is called upon to
22 present aggravating circumstances, which are

1 reasons why the State is requesting the Jury to
2 consider and to impose the death penalty. At that
3 same second hearing, the Defense has an opportunity
4 to present mitigating factors, if they care to.
5 And those would be reasons why the Jury should not
6 impose the death penalty. So these folks are going
7 to want to know something about your views.
8 Whatever your views are on the death penalty is
9 fine.

10 Some people will have, it covers a whole
11 gamut of opinion. There are those who think that
12 if you kill somebody, should forfeit their life.
13 That person cannot very well sit because it
14 couldn't be fair to the State. Other people could
15 not see themselves as ever determining that a
16 person be put to death. And I'm sorry. I
17 misquoted. A person who thought an eye for an eye
18 could not be fair to the Defendant. A person who
19 could never impose the death penalty could not be
20 fair to the State. Do you understand?

21 Now everyone else in between has some
22 view of the death penalty. Some would favor it

1 more than others, some would think it is probably
2 not a very good idea. So we're not going to get
3 people on this Jury that don't have some opinion.
4 What it all boils down to is whether or not each of
5 the 12 jurors can set aside their personal thoughts
6 and follow the law in this matter.

7 The law of Ohio says that if you are
8 charged and found guilty of aggravated murder with
9 certain aggravating circumstances, then the Jury is
10 called upon to consider the imposition of the death
11 penalty, along with three lesser penalties of life
12 imprisonment.

13 The other area will be whether or not you
14 have been influenced by pre-trial publicity. I see
15 in here that you indicate you were not, but there
16 was one comment made by somebody that morning.

17 MS. LANTZ: Correct.

18 THE COURT: Apparently before I gave
19 the instructions, so they will want to know whether
20 or not you have any fixed opinion that you are not
21 able to set aside.

22 EXAMINATION BY MR. BECKER OF MS. LANTZ:

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1 Q. Good morning. My name is Chris Becker, I work
2 with the Prosecutor's Office and this is
3 Mr. Bailey, and I think if you recall
4 last week, Mr. Bailey indicated that I
5 would be joining him later on. I don't
6 know if you remember that or not. I was
7 in another case last week. First of all,
8 I want to ask you a couple of questions.
9 I have noticed on your questionnaire and
10 obviously you have had some ear surgery?

11 A. Yes.

12 Q. Is that going to affect your ability to sit as
13 a juror in this case?

14 A. No. My hearing is already restored. It is
15 just echoing because there's packing in
16 there.

17 Q. There's no complication or side affects that
18 you are going to suffer from this?

19 A. I went back to work Sunday.

20 Q. The reason I ask this, the way this Courtroom
21 is configured. It is your right ear and
22 the witnesses, as they come in this Court

1 will be to your right and I don't know if
2 that would create a problem for you.

3 As the Judge indicated to you, we
4 need to ask you some questions, and if
5 you are selected for this Jury I think
6 you will find it is a very rewarding
7 experience. It is certainly a unique
8 experience and it is really one of the
9 most civic duties that you can perform as
10 a member of our country as a citizen of
11 our country. And we're not trying to pry
12 and if it seems that way, forgive us for
13 that, because we're trying to determine
14 whether you are what we think a good
15 juror should be in this case. And the
16 same thing with Mr. Ingram and
17 Mr. Juhasz, they are trying to determine
18 if you are a good juror for them. So we
19 need to know as much about you as we can.
20 We have a very short time to do it. If
21 there's anything that you feel is
22 relevant as I am speaking to you that you

1 need to tell me, or by all means
2 particularly, if you have any questions,
3 questions about this process or questions
4 about what your role may be, by all means
5 stop me and say, "Hey, I have got a
6 question." Because this is really the
7 only opportunity in this case that we get
8 to speak to you as the attorneys.

9 If you are selected as a juror, and
10 you are seated over here in the Jury box
11 during this trial, the rules of conduct
12 for attorneys and the law relating to
13 attorneys, we can't speak to you once the
14 trial begins. We can't say, "Hey, did
15 you hear that witness?" And you can't
16 lean over to us and say, "Hey, what did
17 they mean when they said this?" We can't
18 do that. Once the trial begins, even if
19 we see you in the hallway or lunch or
20 something, we're not being rude, but we
21 can't give even the appearance that we're
22 trying to influence your decision, so

1 that is why that rule exist. So it is
2 really important that we discuss with you
3 today, your role and your feelings about
4 this case, and particularly this case
5 because it does involve the potential
6 penalty of the death penalty.

7 One of the things that is sort of
8 strange about a death penalty case is, is
9 that the death penalty is a potential
10 penalty that a Jury can return in a case
11 like this. And we're going to be
12 presumptuous here in assuming we get to
13 that portion of this trial, because this
14 case is going to have two parts. We may
15 never get to that part where you
16 determine that death is the appropriate
17 penalty, because the first thing we have
18 to do is, the State has to prove to you
19 and your fellow jurors that she's even
20 guilty by proof beyond a reasonable
21 doubt. It is our burden to prove that,
22 and if we don't do that, then we don't

1 end up getting onto that second phase.

2 So, bear with me, and that falls a
3 little bit in line of, like I said, once
4 the trial begins, we can't speak to you
5 so we couldn't very well have the trial
6 and you guys as a Jury determine that
7 she's guilty, and then we say, "Now the
8 next part of this trial is going to be
9 where you are going to determine whether
10 she should receive the death penalty."
11 There might be two or three or four
12 jurors on there that say, "Wait a minute.
13 I can't go along with that, my religious
14 beliefs or my personal opinion is, I
15 don't believe the death penalty should
16 exist." Then we're stuck and we have to
17 start all over again. That is why we
18 have got to ask you this in advance and
19 prepare you for it.

20 I notice on your questionnaire, also
21 that you had, I think a concert that you
22 are going to on May 13th?

1 A. Yes.

2 Q. I don't know what day of the week that is. Is
3 this a local concert?

4 A. Yes, it's in Cleveland.

5 Q. It is a Tuesday night. I don't know if we'll
6 be done on May 13th. We're going to try
7 and obviously get done as quickly as we
8 can, but this is a long process. You
9 weren't planning on like taking the whole
10 day off or anything?

11 A. No.

12 Q. I am assuming you would be back late that
13 night?

14 A. Yes.

15 Q. We usually break here at 4:30, sometimes five
16 at the latest. I am assuming the concert
17 maybe starts at seven or eight at night?

18 A. Something like that.

19 Q. It wouldn't affect you one way or the other,
20 in terms of that? We won't want to keep
21 you here until 8:00 or 9:00.

22 THE COURT: Mr. Becker, May 13th,

1 could conceivably be the case could be to the Jury
2 by then.

3 MR. BECKER: That is true.

4 Q. There could be an issue of you may have the
5 case. You may be deliberating. And
6 depending on where we're at in the
7 stages, you may be if we're in the second
8 phase, you may be sequestered, meaning
9 you may be holed up in a hotel. I assume
10 that would be a problem for you?

11 A. Yes. I won't throw temper tantrums if I can't
12 go.

13 Q. If you got to that point, you won't say, "I
14 don't care what happens. I just lost 100
15 bucks on this concert. I'll do
16 whatever." You wouldn't feel that way,
17 would you?

18 A. No. I would give them to my Mom or sister.

19 Q. As much as it would be an inconvenience, but
20 it wouldn't affect your ability to sit as
21 a juror in this case?

22 A. Exactly.

1 Q. And I hope we don't get to that point, but if
2 we do inconvenience some people,
3 sometimes that does happen. The first
4 thing I want to talk about, you indicated
5 in your questionnaire that you do believe
6 that the death penalty is appropriate in
7 some circumstances, correct?

8 A. Exactly.

9 Q. Now, this particular case is, and I'm going to
10 talk to you a little bit about this, is
11 that Miss Roberts is charged with two
12 different counts of murder. It is
13 basically two different ways of going
14 after the same thing or approaching this
15 case. And both of the murder charges,
16 the aggravated murder charges, carry the
17 potential penalty of the death penalty.
18 We're going to tell you right now, that
19 Miss Roberts is not the trigger person.
20 She didn't pull the gun in this case.
21 She didn't pull the trigger on the gun
22 and fire the gun. She's alleged to be in

1 one instance, what we call an aider and
2 abettor or complicitor. She helped or
3 she encouraged or she incited someone
4 else to commit this crime. And there's
5 probably going to be some testimony that
6 it is committed with prior calculation
7 and design which basically what that
8 means is, it was planned. It was
9 premeditated. It was discussed
10 beforehand to do this. You don't
11 necessarily think that if it was proven
12 to you that it was a planned homicide
13 that that would necessarily mean that you
14 had to give the death penalty, would you?

15 A. No.

16 Q. And you understand that in this case, if you
17 get by the first phase where you find --
18 you and your fellow jurors find her
19 guilty, you would have four potential
20 penalties. You could give the penalty of
21 death, you could give life in prison with
22 no parole, you could give life in prison

1 with no parole until 30 full years have
2 been served, and life in prison with no
3 possibility of parole until 25 full years
4 have been served. So, you would have a
5 range of penalties to choose from if you
6 get to that second phase.

7 And I guess the important question
8 to ask you is, are you so in favor of the
9 death penalty that you would
10 automatically give the death penalty in a
11 case where someone had been convicted of
12 premeditation or planning the killing of
13 another?

14 A. No.

15 Q. You would fairly consider all four of those
16 options?

17 A. Correct.

18 Q. Now when we get to that second phase and if we
19 get there, it would be again the State's
20 burden to prove that Miss Roberts
21 deserves that penalty. The first thing
22 we would have to do in the first phase,

1 we have to prove that she's guilty by
2 proof beyond a reasonable doubt. The
3 second thing we would have to do if we
4 were able to convince you and your fellow
5 jurors of that would be that the
6 appropriate penalty is death. And the
7 Court will instruct you on how to do
8 that. There's a weighing process. You
9 take the aggravating circumstances, which
10 the Court will tell you what those are,
11 and you weigh them against any mitigating
12 factors. And you may find that the State
13 didn't prove that the aggravating
14 circumstances outweigh the mitigating
15 factors, or the mitigating circumstances.
16 And what you may discover is that the
17 death is not the appropriate penalty and
18 you may find one of those other three,
19 what they call life options. So you are
20 not such a firm believer in the death
21 penalty that you would come in and say,
22 "She was involved in a planned murder.

1 Someone is dead. I believe that you have
2 to suffer the consequence of death, if
3 you have been involved in planning the
4 death of another."

5 A. No, I don't feel that way. I would have to
6 hear everything.

7 Q. You would have to hear and follow the Court's
8 instructions and weigh what the evidence
9 was. And by the same token, the mere, I
10 guess on the other side of that is, the
11 mere facts that she didn't pull the
12 trigger, and she wasn't actually the
13 actual killer, the actual shooter in this
14 case, you would still consider the death
15 penalty as an option, if we were able to
16 prove to you by proof beyond a reasonable
17 doubt that the aggravating circumstances
18 outweigh the mitigating factors, correct?

19 A. Correct.

20 Q. And basically, what I'm asking you is, if the
21 facts warranted it, and the law allowed
22 it, you could go back to the Jury room

1 here in a couple of weeks and sign a
2 piece of paper, with 11 other jurors that
3 recommended the death penalty, correct?

4 A. Yes.

5 Q. Now, the Court also in your questionnaire
6 asked you some questions about what you
7 have heard about this case. And I think
8 on your questionnaire, you indicated that
9 until last Tuesday when you came here,
10 you had not heard about this case.

11 A. No.

12 Q. Now we're here and you are here on Tuesday,
13 April 8th, and one of your fellow
14 prospective jurors tells you about this
15 case or mention something?

16 A. Just that she killed somebody and there was a
17 boyfriend or husband or something.

18 Q. Did he indicate how he got his information?

19 A. He said it was in that day's paper.

20 Q. You understand that -- let me ask you this.

21 Has that influenced you to such an extent
22 that you think, "My goodness, this juror

1 next to me said that she was involved in
2 this killing, I'm going to go in there
3 and find her guilty"?

4 A. No.

5 Q. Did you know this juror beforehand or just
6 meet him that day?

7 A. Did not know him at all. Didn't even know his
8 name.

9 Q. And that would have no bearing on this case,
10 because you understand that in this case,
11 the only thing that really matters is
12 what, the evidence that comes before you,
13 either through the witness stand or
14 through the Exhibits that are introduced
15 by the parties. What someone may have
16 said in the newspaper or read in the
17 newspaper or saw on television, that is
18 not evidence, right?

19 A. Exactly.

20 Q. So, based upon what this juror told you on
21 April 8th, you are not going, if you are
22 selected for this Jury, you are not going

1 to automatically find her guilty because
2 some person that you don't know mentioned
3 that this is what happened?

4 A. No.

5 Q. You will independently make a determination as
6 to whether or not she's guilty or
7 innocent?

8 A. Yes, exactly.

9 Q. Now, I think you indicated, you have never
10 served on a Jury before?

11 A. No, I have not.

12 Q. And you are -- I think you indicated that you
13 or someone in your family, I believe was
14 a victim of a crime, is that correct?

15 A. Correct.

16 Q. What was the -- was anyone ever charged with
17 that crime?

18 A. Yes.

19 Q. What was the results, if you know?

20 A. He went to prison.

21 Q. Was it here in Trumbull County?

22 A. Yes, over there in that Courtroom.

1 Q. Judge Logan's Courtroom?

2 A. Yes.

3 Q. Recently?

4 A. No. It has been at least ten years.

5 Q. And was your -- it was your sister?

6 A. Correct.

7 Q. How old was she at the time that the action
8 took place?

9 A. Eleven.

10 Q. So she was a minor, obviously. She was very
11 young. Is that person still in prison?

12 A. No.

13 Q. He got out?

14 A. Correct.

15 Q. Is there anything in that experience, I am
16 assuming the County Prosecutor's Office
17 prosecuted that individual, was that a
18 plea agreement or was that a trial?

19 A. Trial.

20 Q. He actually went to trial and was found guilty
21 of some crimes?

22 A. Yes.

1 Q. And I am assuming --

2 A. He might have been a plea agreement, because
3 it wasn't actually rape, it was sexual
4 imposition or something.

5 Q. Whatever happened in that experience, would
6 that affect you in this particular case?

7 A. No. They have nothing to do with one another.

8 Q. And the reason we ask is, obviously the
9 Prosecutor's Office, which is in Trumbull
10 County, that is who Mr. Bailey and I
11 worked for, handled that case. I wasn't
12 here ten years ago and Mr. Bailey wasn't
13 either, we were in different counties
14 with different Prosecutor's Offices, but
15 we don't want you coming in and saying,
16 "Boy, those Prosecutors in my sister's
17 case did a great job and I know whatever
18 the Prosecutor's Office does is the best,
19 and if they charge somebody, they must be
20 guilty," or conversely, "Those guys
21 really botched the case up and this
22 person should have got a lot more time.

1 I don't believe anything those guys tell
2 me." It really has no bearing on you in
3 this case?

4 A. No.

5 Q. I assume you have, through the years, through
6 television, newspapers, whatever, even
7 may be your sister's case, have come
8 across some of the terms that are going
9 to come up in this case. Such as
10 reasonable doubt, presumption of
11 innocence and those types of things. You
12 understand that in this case and just
13 like in every other criminal case, the
14 State, which is Mr. Bailey and I, which
15 is the people that are prosecuting Donna
16 Roberts, we have to prove our case by
17 proof beyond a reasonable doubt. And we
18 have to prove all of the elements of the
19 crimes by proof beyond a reasonable
20 doubt.

21 And in this case there's four crimes
22 and I'm not going to get into what the

1 elements are, but let's say each crime
2 has four or five or six elements. Let's
3 say for the sake of argument, say that
4 each crime has five elements and it is a
5 little bit like maybe a waitress bringing
6 over some drinks to a table if you are
7 out for dinner or something and before
8 you eat, everybody orders drinks. You
9 are with four other people and they are
10 all there, and the reasonable doubt
11 aspect is going to be like those drinks,
12 those glasses, whether they are beer or
13 mixed drinks or pop or water. Reasonable
14 doubt isn't to the very top of the glass.
15 So, if you just move it a little bit, it
16 spills out. It is pretty close to the
17 top. It may be different for every juror
18 and different for every person. Some
19 people may say it is an inch or two from
20 the top. Some may say it is a quarter
21 inch. Some may say it is a half inch.
22 It is certainly not to the very top and

1 certainly well beyond the halfway point.
2 Because it is proof beyond a reasonable
3 doubt. And if the waitress comes over
4 with five drinks and one of those glasses
5 is empty, if those are like the elements
6 of the crime, and one glass is empty, we
7 haven't proved our case. And even if one
8 of those glasses is half full, we still
9 haven't proven that element by proof
10 beyond a reasonable doubt. All of the
11 other ones may be filled up to the top
12 and I don't know if that is a good
13 example or not?

14 A. I understand.

15 Q. If you heard bad things in this case, bad
16 language by Miss Roberts -- letters,
17 phone calls, that were explicit sexually
18 that talked about things that most people
19 don't talk about, and the State proved to
20 you, let's say four out of the five
21 elements, you wouldn't find her guilty,
22 just because she used bad language or

1 just because she indicated she was going
2 to do some bad things, would you?

3 A. No.

4 Q. You would need proof to show that she had a
5 role or involvement in these things,
6 correct?

7 A. Exactly.

8 Q. And where that proof is beyond a reasonable
9 doubt, is going to be different for every
10 juror, but you would hold the State to
11 their burden of proof?

12 A. Yes.

13 Q. Now tied into that is the, and sort of
14 related, sort of related concepts here is
15 the, what they call the presumption of
16 innocence. You agree, or you are
17 familiar with that concept, that every
18 person is presumed innocent until they
19 are proven guilty by proof beyond a
20 reasonable doubt?

21 A. Exactly.

22 Q. Just like your sister, I'm sure someone

1 probably explained, I don't know how much
2 you were involved in speaking to the
3 Prosecutor's Office, but even though he
4 was charged with these heinous crimes of
5 sexually abusing her, he came into the
6 Courtroom, presumed innocent. You
7 personally may not have felt that way,
8 because you were close to the case, but
9 someone who sat in this Jury box for his
10 trial, was told that he was presumed
11 innocent until his guilt was proven by
12 proof beyond a reasonable doubt. You
13 don't have a problem giving Donna Roberts
14 the same presumption of innocence, do
15 you?

16 A. No. Because it could have very well possibly
17 be me and I would want somebody to be
18 giving me a fair trial.

19 Q. It could have been you or someone from your
20 family or something like that?

21 A. Exactly.

22 Q. So you have a good handle of why we have that?

1 A. Exactly.

2 Q. And you don't have a problem giving her the
3 presumption of innocence?

4 A. No, I don't.

5 Q. Now, one of the things that you are going to
6 hear about this case and find out about
7 is that obviously, a person has died, and
8 I'm going to predict, because I'm sure
9 you will, you are going to see, hear some
10 testimony about how he died. You are
11 going to probably hear from the County
12 Coroner or one of his assistants, who did
13 the autopsy. You are going to hear in
14 detail how the death occurred, what
15 caused the death, the type of injuries.
16 You are probably going to see some
17 photographs of some injuries that are not
18 going to be pleasant to look at. And you
19 are probably going to feel sympathetic
20 for someone. You may feel sympathetic
21 for Miss Roberts. You may feel
22 sympathetic for Mr. Fingerhut who is the

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1 victim in this case or his family, but
2 you understand the Court is going to tell
3 you, you are going to have to leave that
4 sympathy outside of your decision. You
5 can't find Donna Roberts guilty just
6 because you saw some photographs and you
7 feel sympathetic for the way someone
8 died. And on the other side of that
9 coin, you can't find her not guilty
10 because you feel sympathetic to her, that
11 these options that you may have
12 eventually, death, life with no parole,
13 life with parole after 30 years, and life
14 with parole after 25 years, you can't
15 feel sorry for her because that is a long
16 time. You wouldn't do that, would you?

17 A. No.

18 Q. Now, what happens in any criminal trial and
19 basically, what your role is going to be
20 is, you are going to have to sort of
21 decide who is telling the truth and
22 whether you should believe that person's

1 testimony. And that goes for the
2 Defendant, should she take the witness
3 stand as well. I don't know if she's
4 going to or not going to. If she does
5 take the witness stand, you have to treat
6 her just like any other witness. Now if
7 she doesn't take the witness stand, you
8 cannot consider that for any purpose. Do
9 you understand that?

10 A. Yes.

11 Q. Because she has that presumption of innocence
12 and she has her Fifth Amendment right not
13 to be compelled to testify against
14 herself.

15 But let's say we're talking about
16 another witness, on here, and let's say
17 the witness' testimony is crucial and I'm
18 not saying this is going to be in this
19 case let's say the witnesses testimony is
20 going to be crucial to establishing
21 something, whether he saw something, or
22 did something. You are going to look for

1 certain signs that what this witness is
2 telling you is truthful, right?

3 A. Exactly.

4 Q. If he says he sees something in a dark alley
5 at midnight, and it is later proven that
6 that alley doesn't even have any lights
7 in the back, the individual doesn't see
8 well at night. You are going to be a
9 little suspicious of his testimony,
10 correct?

11 A. Yes.

12 Q. As opposed to someone who may say that they
13 were here in Courthouse Square at 12 noon
14 on a bright sunny day in June of last
15 year and they saw some tragic event, a
16 shooting, a stabbing, whatever it was,
17 and they have very good vision. They
18 were only five to ten feet away from when
19 this shocking event occurred. They
20 happen to carry a note pad with them and
21 they wrote down the license number and
22 that is going to be a little bit more

1 credible in your opinion. Those are the
2 kind of things you have to do as a juror,
3 correct?

4 A. Yes.

5 Q. You don't think you would have a problem
6 determining maybe who has more of a bias
7 or interest in this case or maybe who had
8 an opportunity to see things or do things
9 in this case?

10 A. I don't think I will have a problem with that,
11 no.

12 Q. How did you feel when you first got found out
13 that you were actually called for this
14 case for Jury duty?

15 A. Curiosity.

16 Q. Did you feel as if, were you eager to do it,
17 or did you look at it as a burden or did
18 you say, "I would like to do that, I have
19 never served on a Jury"?

20 A. I was kind of eager.

21 Q. You wanted to do it?

22 A. Exactly.

1 Q. And I assume you still want to serve?

2 A. Yes, I think I'm a pretty fair person.

3 Q. And you can look at both sides of the
4 situation?

5 A. I am the peacemaker in the family, everybody
6 tells me.

7 Q. In this particular case, and I highly doubt
8 that this is going to happen, but in any
9 criminal case, including this one, the
10 Defendant doesn't have to convince you of
11 anything. It is sort of a unique
12 situation. You may want to know certain
13 things about why they were done and you
14 may want to know certain things about
15 Donna Roberts, but you may never find
16 them out, because she has this
17 constitutional right not to testify. And
18 in fact, her and her attorneys could do
19 nothing in this case. Again, I highly
20 doubt that that is going to happen, but
21 the burden is completely on the State to
22 prove her guilt or innocence. And we may

1 present to you 30 or 40 witnesses, and
2 still not convince you and your fellow
3 jurors that she's guilty beyond a
4 reasonable doubt, correct?

5 A. Correct.

6 Q. Just as if we may be able to present, and I'm
7 not saying this is the case, but if there
8 were a different case, we may present one
9 witness who is so credible and so
10 believable and whose story is so accurate
11 that you may be able to find her guilty
12 just on one witness, correct?

13 A. Yes.

14 Q. And we often discuss that a lot of times, in
15 cases like your sister's, in rape cases,
16 if the victim is so compelling and so
17 detailed or so accurate in her
18 description, that sometimes is enough to
19 convince a Jury that a rape or sexual
20 assault did occur, correct?

21 A. Correct.

22 Q. And I imagine there are cases where again, we

1 could present 20 or 30 witnesses and
2 still not prove much of anything. And if
3 we sat down and we still hadn't proved
4 our case, they may feel confident enough
5 and in fact, it is their right to say,
6 "Your Honor, we don't have anything to
7 present," and then we would go into the
8 closing arguments and we would say what
9 these 20 or 30 witnesses, what they felt
10 they proved and they may say, "Those 20
11 or 30 witnesses didn't prove squat. You
12 have to acquit our client." You would
13 agree that it is the quality of the
14 testimony, as opposed to the quantity?

15 A. Exactly.

16 Q. In this particular case, I know we touched on
17 it earlier, Miss Roberts is charged as
18 the complicitor, she's charged with
19 aiding and abetting. She's not charged
20 as the principal offender. There's not
21 going to be one witness that comes in
22 this Courtroom and says "I saw her pull a

1 trigger and shoot this guy." I believe
2 there's going to be a lot of other
3 testimony, but relating to her
4 involvement, you wouldn't have a problem,
5 if the facts were there and the proof was
6 there, of finding her guilty beyond a
7 reasonable doubt of aiding and abetting?

8 A. Not if the facts are proven, I wouldn't.

9 Q. And you would agree with me that there are
10 ways to aid and abet people and you might
11 not even be there, correct?

12 A. Correct.

13 Q. So I could help somebody commit a crime and do
14 a lot of things for them, before and
15 maybe even afterwards, do things for them
16 to help them in their crime, and I might
17 not even be in the same town when it
18 happens, right?

19 A. Yes.

20 Q. So you don't have a problem convicting someone
21 along those lines?

22 A. No, I don't.

1 Q. I believe you said you knew Stanley Elkins, is
2 that correct, or you knew who he was?

3 A. I knew who he was, that is all.

4 Q. Just from reading the newspaper?

5 A. Basically.

6 Q. Have you ever had any contact directly with
7 him?

8 A. Not that I can recall.

9 Q. I believe you live in Warren Township,
10 correct?

11 A. Yes.

12 Q. I believe Stanley lives in Warren Township as
13 well, and I know his girls are active in
14 sports out there. He used to be one of
15 the Prosecutors in the City of Warren.
16 About 15 years ago, he used to work for
17 the County Prosecutor's Office, then he
18 went there and now he's back in our
19 office. He no longer works for the City
20 of Warren. He works again for the County
21 Prosecutor's Office. The fact that you
22 know who he is, that is not going to make

1 a difference for you in this case?

2 A. No. I know this is the Judge. That is it.

3 Q. That is not going to change your opinion? Is
4 there anything that you feel that you
5 need to reveal or to divulge or tell us
6 about your ability to sit as a juror? Do
7 you have any questions?

8 A. No, no questions. I just feel that everybody
9 deserves a fair trial. They are innocent
10 until proven guilty and I don't feel that
11 I'm the type of person, if I have six
12 people on a Jury that says, "She's
13 guilty," and then five others that
14 doesn't, I'm not going to change my mind
15 just because --

16 Q. You are not going to go along with somebody
17 else?

18 A. I'll not change my mind because somebody else
19 feels differently than me.

20 Q. I assume that works both ways. If you are the
21 only one who said, "Hey, listen guys, I
22 think they proved their case, and she's

1 guilty and here's why, I think so." If
2 the other 11 jurors are sitting there
3 saying, "You are crazy, you are nuts."
4 You are not going to say, just to go
5 along with you, "I have got to get out of
6 here at 5:00 today. I'll say she's not
7 guilty." You wouldn't do that either,
8 would you?

9 A. No, because I would be at the Park Hotel, no
10 kids, no cleaning, no cooking. I'm not
11 going to change my mind or views.

12 Q. How many children do you have?

13 A. I have three. I have a stepdaughter and two
14 of my own.

15 Q. What are their ages?

16 A. My stepdaughter is 19. My son is 14 and my
17 daughter is ten.

18 Q. And I think you mentioned this morning that
19 sometimes you sort of play peacemaker
20 sometimes?

21 A. Yes.

22 Q. And in that role, sometimes I'm assuming you

1 have to determine, you have to do
2 basically what a juror does, you have to
3 determine who is telling the truth or who
4 is not telling the truth?

5 A. Basically.

6 Q. And you are going to use those same tools or
7 the same ideas as you would here in this
8 Courtroom. I have got four kids, and I
9 know sometimes there's fights between
10 them and there's screaming and hollering
11 or there's crying or someone has been hit
12 or something has been taken from someone.
13 And for instance sometimes -- I have two
14 daughters, and they are three and four
15 years old. They are soon to be four and
16 five. But one of the hot topics of
17 dispute among them is Polly Pockets or
18 Barbies or some other child's toy that
19 one or the other has that the other, it
20 belongs to one of them, but the other one
21 wants it or needs it. And I usually can
22 tell when I approach them if I hear the

1 crying or the screaming or the hitting,
2 who is more at fault. Usually if I see
3 the older one pushing the other one down
4 and she's got the doll, and my youngest
5 daughter is crying and I see the other
6 one has got the doll up in her hand, I
7 can usually assume that she probably took
8 it from her. Because I know how my
9 youngest daughter is, she's not the kind
10 that would be aggressive to take it. She
11 probably had it and my bigger child took
12 it from her. Some of those things, that
13 is probably not the best example, but a
14 lot of those things are what we call
15 circumstantial evidence. You think you
16 have a handle on what circumstantial
17 evidence is?

18 A. Yes.

19 Q. And the Judge is going to tell you the rule of
20 law is, circumstantial evidence has the
21 same weight as direct evidence. One of
22 the examples that sometimes I can use is,

1 my son who is eight years old, usually
2 gets everybody else riled up. He's the
3 one who wrestles with them and chases
4 them and screams and yells. And the
5 girls are fine, usually 99 percent of the
6 time when they are on their own, except
7 when they are fighting over these dolls,
8 but for the most part, they play quietly
9 with the dolls, they share, they do
10 things. Now, my son is the type that
11 would usually throw a ball in the house
12 like he's not allowed to or swing a
13 baseball bat or a plastic golf club or
14 some kind of Star Wars toy or something.
15 And this probably happens once every week
16 or two, someone gets hit by something
17 that he's thrown or swung or hit, and
18 usually I can tell without hearing from
19 my informant, my oldest one, what had
20 happened. And this has happened before.
21 I'll come down to the basement and I'll
22 see my youngest daughter holding her head

1 crying and I'll see my son with a plastic
2 bat standing there with this amazed look
3 on his face like, "Well, it was sort of
4 an accident." Knowing full well that
5 he's caught, knowing full well that he's
6 not supposed to be swinging this thing in
7 the house and particularly not near my
8 daughters. He may be a foot or two from
9 the youngest one who is crying. Even
10 though I didn't see him personally hit,
11 and the informant, my four year old,
12 hasn't told me what has happened yet, I
13 can make that inference that my son has
14 hit my daughter in the back of the head
15 with a bat, correct?

16 A. Exactly.

17 Q. I assume you have seen that before?

18 A. Yes.

19 Q. On occasion, I have been wrong, and usually
20 those instances when I am wrong is my son
21 immediately will not have the same look
22 on his face. He may have the bat, but he

1 may be poking something, poking the cat
2 or doing something else he's not allowed
3 to do, but he's nowhere near my daughter.
4 If I see my youngest child crying, it
5 might be something else. It might have
6 been she was bouncing on the sofa and
7 fell off the sofa down the basement and
8 cracked her head. You have to be careful
9 of the inferences you make, correct?

10 A. Correct.

11 Q. If there's enough inferences, going back to
12 the first example with my son with the
13 bat in his hands two feet from her and
14 she's crying and she's not near the sofa,
15 she's not near the couch, there's no
16 other reason she would be crying other
17 than him hitting her in the head with
18 this bat, you can make that inference and
19 assume that he had hit her in the head
20 with the bat.

21 You are going to have to do some of
22 that in this case. Because this crime

1 like most crimes, wasn't committed out in
2 the open streets. It wasn't committed in
3 a house full of people. It wasn't
4 committed while people were in church on
5 Sunday or downtown in the middle of
6 Courthouse Square on a Friday afternoon
7 with 10,000 workers in the downtown area
8 walking around or driving around. So you
9 will be able do that, and you will give
10 the circumstantial evidence, the same
11 weight as the direct evidence?

12 A. I feel I could, yes.

13 Q. Now, one of the other things that happens
14 sometimes and it happens in criminal
15 cases a lot, is that something happens
16 that is so unbelievable that you can't
17 believe somebody did something this
18 stupid and got caught. I assume you have
19 heard of stories like that. Criminal
20 cases where the bank robber goes in, and
21 he forgets to pull the mask down or he
22 writes the ransom note or the note for

1 the money on the back of his own deposit
2 slip and it turns out that that is his
3 address. You have heard of things like
4 that?

5 A. Exactly.

6 Q. And one of the things is that the Court will
7 tell you is, we don't have to prove why
8 they did it, just that they did it. You
9 won't hold us to a higher standard of
10 proof or why the heck did they do
11 something that stupid? There may be some
12 questions you have about this case, and
13 about why something happened, but that
14 doesn't necessarily mean that it is
15 reasonable doubt, correct?

16 A. Correct.

17 Q. Given all of this discussion here, is there
18 any questions or anything that you feel
19 that you got to tell us or that you feel
20 may impact on your ability to serve as a
21 juror?

22 A. Just that I feel that I'm pretty unbiased.

1 Q. You would be a fair person for both sides?

2 A. I feel so, yes.

3 Q. And you seem that way to me. You seem

4 genuinely that you would listen to both

5 sides and you would be fair to both sides

6 and you would make your determination

7 fairly and impartially. That is what we

8 want. We had some people prior to today

9 that said, "I believe in the death

10 penalty if the charge is murder and she's

11 found guilty, I am giving her the death

12 penalty." We had other people who read

13 too much about the case, or seen too much

14 on T.V., whether or not the news

15 reporting is accurate.

16 A. I was attempted to go home and grab a paper

17 and look at it, and I thought, no, I

18 can't do it. I know to myself I'm not

19 being fair.

20 Q. That is not evidence, either.

21 A. Exactly.

22 Q. If you are selected for this Jury, you are

1 going to find that throughout the course
2 of these proceedings, there might be a
3 reporter popping in, you might hear the
4 cameras setting in back there. They will
5 put up a tripod. They can't photograph
6 you as jurors. They may photograph the
7 Judge or the Court Reporter, and then
8 they will pack up five minutes later and
9 leave, and then on the 6:00 news, they
10 will say the testimony today was this,
11 and they said this and that. They will
12 cram in a whole day of testimony into
13 about 15 minutes or maybe a minute. They
14 are going to cram in hours of testimony
15 into a minute, and they may leave lots of
16 stuff out.

17 A. Exactly.

18 Q. And it sounds to me like you are already
19 following the Court's instructions on not
20 reading about this case or following it
21 on television or listening to the radio.
22 Even though you had curiosity, you have

1 refrained from doing that?

2 A. Exactly.

3 Q. You did mention on your questionnaire, you
4 knew in law enforcement, Jeff Fusco?

5 A. I went to school with him and he was a
6 neighbor. He lived up the street from
7 me.

8 Q. When was the last time you had contact with
9 Jeff?

10 A. Probably two years ago. I seen him at the
11 store and said "Hi".

12 Q. The fact that you know Jeff Fusco who is a
13 Warren Police officer, that is not going
14 to affect you one way or the other?

15 A. No.

16 Q. And you are not going to be more favored for
17 the State, because you know a police
18 officer or more favored for the Defendant
19 because you know a police officer?

20 A. No.

21 Q. Going back to your question about the media.
22 You did tell us in your questionnaire

1 that not everything in the paper is true
2 anyway?

3 A. Exactly. I have had experiences with it.

4 Q. I am assuming that experience may have been
5 related to your sister's case?

6 A. Correct.

7 Q. And so you understand the fact that sometimes
8 things are in there that are misreported,
9 misunderstood. Inaccurately reported,
10 and that is very important that you not
11 follow what is in the newspaper, because
12 there may be things in there that are
13 incorrect or inaccurate or just plain
14 wrong.

15 A. Exactly.

16 Q. You have personally had that experience?

17 A. Yes.

18 MR. BECKER: Thank you very much,
19 and Mr. Ingram or Mr. Juhasz will ask you some
20 questions.

21 THE COURT: Can you come back in a
22 hour?

1 MS. LANTZ: Yes.

2 THE COURT: Be back here at 1:00.

3 MS. LANTZ: Okay.

4 (Court in recess at 12:00 noon)

5 (Resumed in Open Court at 1:05 p.m.)

6 EXAMINATION BY MR. JUHASZ OF MS. LANTZ:

7 Q. Good afternoon. Last week, Judge Stuard had
8 all of us introduce ourselves and my name
9 is John Juhasz, and this is Jerry Ingram
10 over here, and he and I are representing
11 Donna, who as you know, is on trial for
12 her life. The reason we make you come up
13 here and ask you all of these questions
14 is because it is sort of like a job
15 interview, where you are being
16 interviewed of being a juror. And I
17 suppose you would anticipate that we
18 would want to ask some questions of
19 somebody who might take on that job,
20 particularly if you or I were sitting
21 over there in that chair and being the
22 person on trial?

1 A. Correct.

2 Q. I think when you talked about the presumption
3 of innocence, you said that is a pretty
4 good idea, because if you were sitting
5 over there, you would want to have the
6 presumption of innocence?

7 A. Exactly.

8 Q. It is a little bit different than the normal
9 job interview, however, because instead
10 of you applying for the job, we sent you
11 a notice to come down here. Because you
12 probably want to know something about the
13 people who would sit in judgment on you
14 if you were sitting over at that table,
15 does it make sense to you that we would
16 ask you some questions and maybe some of
17 them are -- they are not meant to be
18 prying or offensive, but sort of testing
19 a little bit.

20 A. Sure.

21 Q. So if I do something that offends you, that is
22 not my purpose. It is to simply find out

1 how you feel about things.

2 A. Fair.

3 Q. The two major areas that we have to talk to
4 you about obviously, are the death
5 penalty because this is potentially a
6 capital case, and pre-trial publicity or
7 things that you may have heard about the
8 case and I understand you said you have
9 not read much about the case?

10 A. Correct.

11 Q. Let's talk for a second about the death
12 penalty and I'm going to try not to
13 reiterate things that people have already
14 talked to you about, so this doesn't
15 become even more boring than it already
16 is. I think you would agree with me,
17 that if somebody is not guilty of an
18 offense, then there would be no
19 punishment that would be appropriate,
20 correct?

21 A. Correct.

22 Q. If you didn't do anything wrong, you shouldn't

1 be punished, correct?

2 A. Correct.

3 Q. Here we're at the beginning of the trial,
4 before you have heard any evidence about
5 whether Donna Roberts is guilty, and
6 we're talking about punishment already.
7 And the concern frankly that I have is as
8 one of Donna's lawyers, I want to make
9 sure you understand that just because
10 we're talking about penalty doesn't mean
11 that anybody necessarily thinks we're
12 going to get to that stage. Do you see
13 that?

14 A. Yes.

15 Q. We have to have procedures, otherwise the
16 lawyers will be fighting over each other,
17 who gets to talk first and things like
18 that, and one of the procedures is that
19 we talk about everything that might
20 potentially come up, whether it ends up
21 coming up or not.

22 A. Okay.

1 Q. That is one of the reasons for example, why
2 the lawyers will talk to you about well,
3 how about if the Defendant testifies, or
4 how about if she doesn't testify. We
5 don't know at this point whether she's
6 going to testify or not, but we have to
7 see your feelings on both of those
8 issues. Does that make sense to you?

9 A. Yes.

10 Q. My understanding is that, well, before we'll
11 get there -- and I should ask this
12 question because we bring you in here and
13 we give a whole bunch of new rules that
14 you are not used to dealing with and
15 assume that you understand how it all
16 works. You did have a chance to read
17 that handout, correct?

18 A. Yes.

19 Q. Do you think you are pretty comfortable with
20 how the two separate phases of a capital
21 trial work?

22 A. Yes.

1 Q. You don't think we need to spend any time
2 going over that?

3 A. No.

4 Q. One thing I would like to spend a minute or
5 two on, however, is we use some big fancy
6 words and I wanted to make sure that you
7 understand them and how they work. And
8 as I often like to do when I am giving an
9 example, I want to talk about something
10 that has nothing to do with this case, so
11 let's go back for a second. Maybe you
12 knew, maybe you didn't before you came in
13 here, not everybody who gets found guilty
14 of a murder in Ohio, can get the death
15 penalty; did you know that?

16 A. Yes.

17 Q. Not everybody who gets found guilty of --
18 let's talk about a premeditated,
19 aggravated murder, is also eligible for
20 the death penalty.

21 A. Correct.

22 Q. There has to be an additional special

1 circumstance. The one that I like to
2 talk about that has nothing to do with
3 this case is that in Ohio, if you get
4 charged with an aggravated murder, and
5 the Government alleges that this isn't
6 just any aggravated murder, that you
7 should get the death penalty because the
8 person you killed is the Governor.
9 There's a few of them listed in the
10 statute. The President, the
11 Vice-president, the Governor, Lieutenant
12 Governor; the General Assembly in Ohio
13 said that is a more serious type of
14 offense if you are found guilty of that,
15 you should be eligible for the death
16 penalty. Fair enough?

17 A. Yes.

18 Q. And that allegation in essence in an
19 indictment like that, let's say for a
20 second that the Government accuses me of
21 that. They say, "Juhasz, on such and
22 such a date in Trumbull County, Ohio, you

1 killed a guy named Bob Taft and you
2 planned it. You did it with prior
3 calculation and design." That is
4 allegation number one, that we call
5 aggravated murder. The second one is
6 what we call a specification. Something
7 that if you the Jury find it to be true,
8 could make me eligible for the death
9 penalty and that specification in this
10 indictment, I am talking about would
11 be -- and by the way, Juhasz, the Bob
12 Taft that you killed on such and such a
13 date in Trumbull County was the Governor
14 of the State of Ohio and it is sort of a
15 warning to go, "Hello, if you get found
16 guilty of this, you could get the death
17 penalty." Let's just say at my imaginary
18 trial where I am on trial for killing
19 this guy, that they bring in all kinds of
20 proof that convinces you. There's 27
21 eyewitnesses, and three confessions and
22 two video tapes. And they all prove

1 beyond a doubt, beyond any reasonable
2 doubt, that I'm the guy that killed Bob
3 Taft. But, whether by mistake or not,
4 whether by omission or not, the
5 Prosecutor in my case failed to prove
6 that he was the Governor of the State of
7 Ohio. And you know we could spend all
8 day talking about how they might do that.
9 Maybe they introduced some fancy
10 certificate dripping with ribbons and
11 seals, saying he was the Governor. Or
12 they bring in the Chief Justice, who says
13 that the dead guy is the Governor. I
14 swore him in. They forgot to do that.
15 In that case do you see there are two
16 separate burdens of proof, one of them
17 they met, the 27 eyewitnesses and the
18 three confessions and the two video
19 tapes; the other one they didn't meet.
20 Any problem distinguishing between those
21 two?

22 A. No.

1 Q. Any problem holding the Government to a
2 separate burden of proof beyond a
3 reasonable doubt for both of them?

4 A. No.

5 Q. And so in my imaginary case, if they didn't
6 bring in the certificate of the Chief
7 Justice or whatever, you could rightfully
8 find me guilty of aggravated murder and
9 then the case would be over as far as you
10 are concerned, do you see that?

11 A. Yes.

12 Q. Because it is not a death penalty case, you
13 would have nothing to do with the
14 punishment then?

15 A. Correct.

16 Q. And then you would find me not guilty based
17 upon the examples I have given you or the
18 facts I have given you of the
19 specification. You are okay with all of
20 that?

21 A. Yes.

22 Q. And the only other thing I want to talk to you

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1 about the death penalty for a second
2 is -- let's say that they did bring in
3 the Chief Justice or they did bring in
4 that certificate and whatever proof and
5 you were now persuaded not only I was
6 guilty of the aggravated murder but
7 guilty of the specification. In those
8 circumstances, we would then go to a
9 second phase, correct?

10 A. Yes.

11 Q. And as you know, there are four potential
12 penalties that I am facing in that second
13 phase.

14 A. Yes.

15 Q. My question to you is, if you found yourself
16 in that situation, would you go into that
17 second phase with all of those penalties
18 sort of equal in your mind starting out,
19 or would one of them have a leg up over
20 the other?

21 A. They would all be equal.

22 Q. And then you understand that the burden would

1 be on the State to prove again, if it
2 could, by proof beyond a reasonable doubt
3 that, and I'm going to sort of translate
4 into layman's terms, some of these big
5 fancy words that we use, we call them
6 aggravating circumstances. They are
7 really reasons to impose the death
8 penalty. In my imaginary case, the
9 aggravating circumstance would be the guy
10 was the Governor. The specification at
11 the first phase actually becomes the
12 reason to impose the death penalty at the
13 second phase. Against that, you would
14 weigh whatever evidence I would present
15 to you for why you shouldn't give me the
16 death penalty. If the gentlemen from the
17 Prosecution who are prosecuting me,
18 proved to you at the second phase beyond
19 a reasonable doubt, that the reason to
20 impose the death penalty outweighs the
21 reasons not to, and if they persuade you
22 that death is the appropriate punishment

1 for me in this case, then they will have
2 met their burden of proof. And under
3 those circumstances I take it, you would
4 have no trouble signing a verdict for the
5 death penalty?

6 A. Correct.

7 Q. You decide, as I think maybe you have been
8 told, what weight to give those
9 circumstances at the second phase; do you
10 understand that?

11 A. Yes.

12 Q. And if somebody didn't persuade you, then you
13 would have no trouble returning one of
14 those life sentences, correct?

15 A. Correct.

16 Q. Do you have any questions about that, or about
17 the death penalty itself, how it works in
18 a case like this?

19 A. No, I don't.

20 Q. I think you would agree with me, you said you
21 were curious when you got your Jury
22 summons?

1 A. Correct.

2 Q. And I think you would agree with me that if
3 you are selected as a juror in this case,
4 it would be an awesome responsibility,
5 correct?

6 A. Yes.

7 Q. Do you feel that you are up to that
8 responsibility?

9 A. Yes.

10 Q. We do, as Mr. Becker's questions suggested to
11 you, we do try, we want you to serve as a
12 juror, but we also don't want it either
13 that we ruin your personal life or
14 equally important, that you are thinking
15 something about your personal life so
16 much that you are not giving us all of
17 your attention, and that is why we asked
18 you questions about your surgery and your
19 concert tickets and things like that.
20 And you were a little bit soft spoken,
21 I'm not sure that I heard you, you said
22 as far as the concert tickets, if you

1 ended up stuck in the hotel in
2 sequestration, you would give those
3 tickets away and it wouldn't be a big
4 deal?

5 A. No, it wouldn't be a big deal at all.

6 Q. Who are you going to see?

7 A. Fleetwood Mac.

8 Q. That would hurt to give those away?

9 A. My Mom would enjoy it.

10 Q. Now, I want to talk to you a little bit about
11 pre-trial publicity and in your case, the
12 pre-trial publicity takes on a little bit
13 different form because it can be
14 something either that you heard in the
15 news or in the paper, or it could be
16 people talking in the community, or in
17 your case, even in the Courthouse. So, I
18 think I know the answer to this first
19 one, but let me ask you. Have you heard
20 anybody at work or any of your social
21 acquaintances or anything like that,
22 talking about this case?

1 A. No, I have not.

2 Q. You have read nothing in the paper or seen
3 nothing on T.V.?

4 A. No.

5 Q. We can eliminate all of that?

6 A. Exactly.

7 Q. Now let's go back to last week when you were
8 here. And I'm going to ask you a lot of
9 questions and just ask you to do your
10 best with them as far as your
11 recollection serves you. First of all,
12 tell me if you can remember specifically,
13 what this gentleman said?

14 A. He said he read the article in the paper that
15 they were doing Jury selection that day
16 and he believes that we were there as
17 possible jurors for a lady that killed
18 her husband or boyfriend. And I said,
19 "Oh, this is not a traffic accident
20 then?"

21 Q. A very astute observation on your part?

22 A. That is basically, that was the end of it.

1 Just started talking to somebody else.

2 Q. He did or you did?

3 A. He did. I had a book, I am ready to read.

4 Q. Were you able to hear what he said when he was
5 talking to the other person? Was he
6 talking about the same thing?

7 A. Some of it, I think. They were talking about
8 their jobs.

9 Q. You mentioned I think when Mr. Becker was
10 asking you questions, it might have been
11 when Judge Stuard was asking you
12 questions, I thought I heard you say that
13 he said that there was an article in that
14 day's paper?

15 A. Yes.

16 Q. Not the day before?

17 A. That day.

18 Q. So last Tuesday when were you here, there was
19 something that day that he had read?

20 A. That is what he said. I didn't see the paper.

21 Q. When I ask you these questions, I am assuming
22 that you don't know anything about it,

1 that you are relating to me what this
2 gentleman said to you?

3 A. Yes.

4 Q. And now you said that after that conversation,
5 he turned to someone else?

6 A. Yes.

7 Q. And you think that at least part of that
8 conversation was sort of a repetition of
9 what he said to you?

10 A. I believe so. I wasn't really paying that
11 much attention. I'm not a person for
12 gossip. I kind of blow it off.

13 Q. I think I heard you say that you don't know
14 this guy's name?

15 A. No, I don't.

16 Q. Have you seen him since then, either in the
17 Courthouse, either today, when you have
18 been here or when you were here last
19 week; did you have any other contact with
20 him?

21 A. No.

22 Q. Are you able to describe him at all for me?

1 A. Honestly, no, I'm not good with faces. I have
2 to see you like a lot.

3 Q. If you remember, and again, accept my
4 apologies in advance, I'm asking you the
5 best you can, with your recollection. If
6 you remember, when did this conversation
7 take place in relation to when the
8 lawyers were in the Courtroom and the
9 Judge was talking to you and that kind of
10 thing?

11 A. It was before. We were in the Courtroom, but
12 nobody was talking yet or anything like
13 that. It was just everybody was coming
14 in at that point.

15 Q. Was Miss Roberts there or was she not, did you
16 notice her in the Courtroom?

17 A. At the point, no, she was not there.

18 Q. When, well, I'm sorry, before I'll ask you
19 that -- do you remember where you were in
20 the Courtroom -- that is a big Courtroom?

21 A. When you walk in the Courtroom on the left
22 hand side at the very end of the window

1 sill.

2 Q. You walk in through these big doors down
3 there, you would turn to your left?

4 A. Correct. I was standing all the way at the
5 end by the window, actually I was sitting
6 in the window.

7 Q. So, as Judge Stuard faced you when he came on
8 the bench, you would be to his right?

9 A. Correct.

10 Q. And you said you were sitting on the window.
11 Was this gentleman sitting or was he
12 standing?

13 A. He was standing, leaning against it.

14 Q. Were there people behind you and in front of
15 you?

16 A. There was one gentleman in front of me and
17 then everybody else was lined up behind
18 me along the wall.

19 Q. And you are moving your left hand as if the
20 people were lined up behind you and to
21 your left?

22 A. If I am looking at this direction, yes. If I

1 would be sitting there, it would be to my
2 right.

3 Q. I'm sorry, do that again for me. The people
4 were to your right?

5 A. When I was sitting there, yes. Sitting where
6 I am sitting now, they would be to the
7 left.

8 Q. And you said there were people behind you?

9 A. Not behind me, beside me.

10 Q. And people in front of you?

11 A. One gentleman, that was all.

12 Q. When this gentleman who spoke to you turned
13 after your conversation to speak to other
14 people, if you noticed, did he talk to
15 one person or more than one person?

16 A. I think it was more than one. There was like
17 three of the guys standing there, kind of
18 like talking.

19 Q. So when I say more than one, it wasn't
20 necessarily more than one conversation
21 that he had after you, it was a
22 conversation where there were two or

1 three or four participants?

2 A. Yes, and I know they were talking. He had
3 conversation about where he worked.

4 Q. What was your impression when you heard him
5 say this?

6 A. Honestly, what I thought?

7 Q. Yes. Let me stop you before you answer that,
8 because when you say honestly, if nobody
9 said this to you, I should tell you that
10 the only answer we're looking for are
11 honest ones.

12 A. I thought he was an asshole. That was my
13 first opinion. Who are you to say? You
14 don't know.

15 Q. I take it that is an opinion at that time, you
16 kept to yourself. You didn't say that to
17 him?

18 A. I didn't say that to him.

19 Q. And your conclusion was, how could you say
20 that if he hasn't heard any evidence yet?

21 A. Exactly.

22 Q. Did he leave you with the impression, and I

1 don't want to beat up too much on the
2 words or change the words that you said,
3 but is there something about it, or the
4 words he said that left you with the
5 impression that he thought this woman was
6 guilty?

7 A. Basically, yes. I got the impression that
8 whatever he read in the paper, he
9 believed.

10 Q. Have you talked to anybody else, I mean you
11 wrote it on your questionnaire and we
12 appreciate that, that you brought it to
13 our attention, have you talked to anybody
14 else about that; that is about that
15 conversation?

16 A. No.

17 Q. How would you describe his level of voice? Is
18 he talking pretty much like we're talking
19 now or was it a whisper?

20 A. It wasn't exactly a whisper. It wasn't our
21 volume of level. It was lower.

22 Q. You mentioned that he said something about, or

1 that he talked to these other fellows
2 when he turned away from you, and I take
3 it from your reaction to him that you
4 didn't care to have much more
5 conversation with him?

6 A. Exactly.

7 Q. Is there anything at all that you can recall
8 about him that is distinguishing, that he
9 had on a bright red shirt or bald or
10 glasses or he had a lot of hair?

11 A. He did not have glasses. He was like medium
12 build. Receding hairline. Probably
13 35-ish.

14 Q. So you didn't care to have much more of a
15 conversation with him when he turned to
16 these other fellows, you said that you
17 think that part of it was the same thing
18 he had said to you, correct?

19 A. Correct.

20 Q. And then he also talked about with these guys?

21 A. They were talking about -- I knew Kraftmaid
22 was mentioned. Whether they both did or

1 not.

2 Q. So as far as places that you think he might
3 have worked -- I'm not holding you to
4 this, but the only name you heard
5 mentioned was Kraftmaid?

6 A. I don't know if he mentioned it or the other
7 guy.

8 Q. I take it from what you have said to me today
9 and what you have said to the Court and
10 all of the lawyers, that if you were
11 seated over there and a fellow like that
12 were on your Jury, you wouldn't feel
13 comfortable with him?

14 A. No, I would not.

15 Q. How about if you get seated on this Jury and
16 when you show up for the first day where
17 there's 12 of you, you see him, how would
18 you feel about that?

19 A. I would probably say something because I feel
20 that he wouldn't be unbiased, just from
21 that remark.

22 Q. If, well -- I presuppose something when I

1 asked you the last question, because when
2 I said before if you did show up on the
3 panel of 12, do you think you would be
4 able to recognize this guy?

5 A. It is a possibility, yes. I'm not going to be
6 looking. I have got a vague idea of what
7 he looked like. He had really receding
8 hairline and his hair was dark and his
9 built was medium build.

10 Q. Let me talk to you about a couple of other
11 things, if I may. We have already talked
12 a little bit and you talked with
13 Mr. Becker a little bit, about the
14 concept of proof beyond a reasonable
15 doubt. And I don't want to reinvent the
16 wheel, but one of the things that
17 Mr. Becker talked to you about is I think
18 he said something like, well, you may
19 have a question like how could people be
20 this stupid, why would they commit this
21 crime when they could be so easily
22 caught. And what his suggestion to you

1 was is that when he has the burden of
2 proving the case beyond a reasonable
3 doubt, he doesn't necessarily have to
4 answer all of your questions about motive
5 about why somebody would do something.

6 You appreciate that?

7 A. Okay.

8 Q. But by the same token, you don't know what
9 questions you might have about the
10 State's evidence, because you haven't
11 heard any yet, right?

12 A. Correct.

13 Q. If you have questions that are questions other
14 than those, that you think constitute a
15 doubt, a reasonably legitimate doubt
16 about the Defendant's guilt, would you
17 hesitate to vote to find her not guilty?

18 A. No, I wouldn't hesitate.

19 Q. I said to you before when talking about my
20 silly little case where I got charged
21 with killing that Bob Taft guy, who the
22 State claimed was the Governor. That

1 piece of paper where they would notify me
2 is called an indictment. Have you heard
3 that term before?

4 A. Yes.

5 Q. And lot of people have misconceptions about
6 that and I want to talk about it for just
7 a few seconds. An indictment is a piece
8 of paper issued by a Grand Jury. Did you
9 know that?

10 A. Yes.

11 Q. Did you know that Grand Jury proceedings are
12 secret?

13 A. Yes.

14 Q. Did you know that they are one side, that is,
15 that neither Mr. Ingram nor I were there,
16 Donna Roberts, wasn't there?

17 A. Correct.

18 Q. It is simply a finding that hey, you know
19 what, we find that there's some reason
20 here why this person should stand trial.
21 And jurors, we're in essence to give it
22 to another Jury, we're going to hand the

1 ball off to you and other jurors to make
2 it harder finding of is she guilty beyond
3 a reasonable doubt. Do you appreciate
4 that?

5 A. Yes.

6 Q. The reason I ask you about all of that is, you
7 don't have any misconception do you, that
8 just because Donna has been indicted by
9 the Grand Jury, that constitutes some
10 proof that she committed this offense?

11 A. No, I understand that.

12 Q. And I don't mean to be condescending,
13 sometimes we run into that with jurors,
14 because they don't understand how the
15 Grand Jury process works. I like to talk
16 about the State's burden as being one
17 where they have to fill up a beyond the
18 line called reasonable doubt. And the
19 reason I like to do that is because if
20 the State fills up that box with enough
21 evidence to go beyond the line called
22 reasonable doubt, then they have made

1 their case. And your obligation, your
2 oath would be to find the Defendant
3 guilty. But by the same token, if they
4 don't, then your obligation would be to
5 find the Defendant not guilty; you
6 appreciate that?

7 A. Yes.

8 Q. And the reason I like to use that example is
9 because Mr. Becker, I think also talked
10 to you about the Fifth Amendment and the
11 idea that the Defendant doesn't have
12 to -- Mr. Ingram and I can sit over there
13 and do crossword puzzles if we wanted to
14 during the trial. We don't have to do
15 anything. You are okay with that?

16 A. Okay.

17 Q. Because they either win the case or lose the
18 case, by giving you enough proof or
19 failing to give you enough proof that
20 she's guilty. She doesn't have to do
21 anything to take evidence out of the box,
22 and she doesn't have to pour any evidence

1 in the box herself; do you see how that
2 works?

3 A. Yes.

4 Q. No problem holding the State to that type of
5 burden?

6 A. No.

7 Q. Mr. Becker also talked to you a little bit
8 about circumstantial evidence, and I
9 think he used an example where his little
10 daughter, because his son was swinging
11 the plastic bat like he wasn't supposed
12 to be in the house, there's his little
13 daughter and she's crying and there's his
14 son standing there holding the bat.
15 Mr. Becker didn't see the bat being
16 swung, but he could conclude from the
17 circumstantial evidence that his son had
18 whacked his daughter with the bat. You
19 recall that example?

20 A. Yes, I do.

21 Q. And if you are selected as a juror in this
22 case, Judge Stuard will tell you at the

1 end of the case, that you can in fact use
2 circumstantial evidence, to find the
3 Defendant guilty. You are all right with
4 that?

5 A. Yes.

6 Q. The reason I wanted to talk to you about that
7 is there could be based on the same
8 circumstantial evidence, there could be
9 other theories, which also explain that
10 circumstantial evidence and may give a
11 reasonable doubt about the Defendant's
12 guilt. Do you see how that might happen?

13 A. Yes.

14 Q. For example, let's twist around the example a
15 little bit that Mr. Becker gave you.
16 Let's say that his little daughter, who
17 ultimately was the one who was crying,
18 picked up the bat and she was swinging it
19 around herself and as little kids
20 sometimes do, she accidentally whacked
21 herself on the back of the head, and now
22 she's crying and she drops the bat and

1 she goes running looking for Mom or Dad,
2 and the brother comes out, and goes, "Oh,
3 boy, I'm going to get nailed for leaving
4 this bat somewhere where somebody could
5 trip on it." He picks it up and walks
6 into the other room to see why his sister
7 is crying, and there's Mr. Becker and
8 sees his daughter and sees his son
9 holding the bat. Under his theory of
10 circumstantial evidence, you might be
11 able to conclude that his son swung the
12 bat like he's not supposed to, correct?

13 A. Correct.

14 Q. Under the facts I just told you, the same
15 circumstantial evidence might give a
16 reasonable doubt, in essence about his
17 son's guilt, correct?

18 A. Correct.

19 Q. The reason I use that little example is, I
20 want to make certain that if you are
21 presented with circumstantial evidence in
22 this case, you will test it. If you have

1 a reasonable doubt about that
2 circumstantial evidence, you would still
3 find that the Government had not met its
4 burden of proof. Are you okay with all
5 of that?

6 A. Yes.

7 Q. Is there anything else that has come up while
8 I have been up here that you either have
9 questions about our process, something
10 else that has come up about why you could
11 or could not serve on this Jury?

12 A. Not really. I pretty much understand
13 everything and that example kind of
14 reminded me of parenthood with children.
15 You deal with it every single day and the
16 Fifth Amendment. I tell my kids, "I
17 plead the Fifth, I don't have to tell you
18 why I said you can't do it."

19 Q. You told the Prosecutor you understand all of
20 this. I heard you say that you were
21 going, that your ear is fine, you are
22 going back to work on Sunday?

1 A. Yes.

2 Q. If you get selected as a juror there's no
3 problem getting off work to be here?

4 A. There's no problem.

5 Q. The only reason I ask, is sometimes we have
6 jurors who so want to do their duty that
7 they will like come to Court all day and
8 work the afternoon shift and after a day
9 or two pretty soon they are snoozing.
10 They are not going to make you come to
11 work if you are working as a juror?

12 A. No, they won't.

13 MR. JUHASZ: Thank you very much.

14 (SIDE BAR DISCUSSION, OFF THE RECORD AND OUT OF
15 HEARING)

16 THE COURT: You are going to be in
17 the pool from which this Jury will be selected, so
18 that number that was given to you to call, not this
19 Friday, but the following Friday after 4:30, call
20 that number and you will get further instructions.
21 That following week, we'll probably have you all in
22 here again.

1 Just remember the admonition. You get
2 sick of me saying this, but I have to repeat it.
3 You are not to read anything, watch anything on
4 T.V., nor to discuss anything about the case. I
5 hope your ear is feeling better.

6 (Juror No. 76 excused from the Courtroom.)

7 THE COURT: For the record, both
8 Defense and Prosecution have passed on challenge
9 for cause of the last prospective juror.

10 (Juror No. 72, Lawrence King, entered the Courtroom.)

11 THE COURT: You read that handout
12 that was given to you?

13 MR. KING: Yes.

14 THE COURT: You have been called in
15 here so that you could be asked questions
16 concerning two areas of inquiry, and the one is
17 whether you have read something or seen something
18 about this case that you have your mind made up and
19 would not be able to set aside. The second issue
20 is about your opinion on capital punishment. In
21 order for both sides to get a fair trial here,
22 we're going to have to seat 12 people who even

1 though they may not necessarily be for the death
2 penalty or against it, they are able to follow the
3 law. If somebody believes that an eye for an eye,
4 that person could not be very fair to the
5 Defendant. If a person could never impose the
6 death penalty, then that person could not be fair
7 to the State.

8 So, these gentleman will ask you
9 questions concerning your personal opinion.
10 Whatever your personal opinion is, is fine. You
11 are entitled to that, and we'll respect it. But
12 the attempt is to get 12 people who can be fair and
13 impartial to both sides.

14 In Ohio, it is not the law that if you
15 murder somebody, you automatically get the death
16 penalty. Miss Roberts is charged with aggravated
17 murder with specifications. That means that this
18 Jury could face the possibility of deciding the
19 question of the death penalty, if they would find
20 her guilty of the aggravated murder. The case
21 would then go into a second phase. If they didn't
22 find her guilty, there would be no second phase.

1 That second phase, the Prosecution has to prove
2 beyond a reasonable doubt, the aggravating
3 circumstances. That is reasons why the death
4 penalty should be imposed, outweigh any mitigating
5 factors, that the Defendant would have an
6 opportunity to raise. Those being factors of why
7 the death penalty should not be imposed. You get
8 the picture?

9 MR. KING: Yes.

10 EXAMINATION BY MR. BAILEY OF MR. KING:

11 Q. Mr. King, my name is Ken Bailey and I am
12 Assistant Prosecutor with the Trumbull
13 County Prosecutor's Office. And as I
14 promised you last week, my co-counsel,
15 Chris Becker is here with me today and
16 we're presenting this case on behalf of
17 the State of Ohio.

18 Usually, I go through a litany of
19 questions, but I'm going to cut to the
20 chase. You have got two problems, the
21 first you have got a back problem and
22 that is causing you substantial pain?

1 A. That is not a major problem.

2 Q. Other problem is you know the Defendant's
3 brother, and you formed an opinion. You
4 followed this case very closely, I
5 believe, you are aware of all of the
6 details, and you formed an opinion that
7 she's guilty and she should receive the
8 maximum punishment?

9 A. Yes, I have.

10 Q. I take it no matter what the Judge instructs
11 you, you wouldn't be able to set that
12 opinion aside?

13 A. As Judge Stuard said in the first day, you
14 have to ask yourself, could I be fair and
15 impartial. And if I was a Defendant,
16 would I want me on the Jury, and I would
17 have to say honestly, no.

18 MR. BAILEY: Thank you very much. I
19 have no further questions.

20 EXAMINATION BY MR. INGRAM OF MR. KING:

21 Q. I want to thank you for your honesty and your
22 candor. Last Tuesday when we were at the

1 other end of the hall, were you one of
2 the seated jurors or were you one of the
3 jurors who was standing?

4 A. I was standing.

5 Q. Can you tell me where you were standing? Say
6 I am walking in the door of the
7 Courtroom, would you be to the left?

8 A. To your left.

9 Q. That would be to the Judge's right as you walk
10 in the door, you would turn left?

11 A. Yes.

12 Q. You were standing against the wall?

13 A. Right by the door back there.

14 Q. While you were there, did you say anything to
15 any of the other jurors about this case?

16 A. Not really, no. I said I knew Nick Roberts.

17 I coached with Nick Roberts, which is her
18 brother, which was one reason -- I have
19 been following it, because I knew who it
20 was.

21 Q. Did you say anything about the allegations in
22 the case? Did you say the name of the

1 Defendant before the Judge said her name,
2 if you said the name Nick Roberts?

3 A. No, her name was already brought up. I think
4 her name was mentioned.

5 Q. Did you mention anything about what had been
6 in the newspaper or on the T.V. about the
7 case?

8 A. The only thing I said was that I have read the
9 newspaper and watched T.V. and that I
10 probably would not make a good juror.

11 Q. Do you have any idea to whom you said that?

12 A. No, I don't know.

13 Q. Was it one person or more than one person?

14 A. Well, I think I was speaking to one person,
15 but another person was listening.

16 Q. The person you were speaking to, was that a
17 man or woman?

18 A. A man.

19 Q. The person that was listening, was this a man
20 or a woman?

21 A. I think that was a woman.

22 Q. Did you overhear any other jurors say anything

1 about the case of any kind?

2 A. No, not at all.

3 MR. INGRAM: Thank you. Excuse me,
4 Your Honor. I do have something.

5 Q. (By Mr. Ingram) Your conversation with the
6 one gentleman when the woman was
7 listening, was that before or after the
8 Judge started talking?

9 A. After, I believe.

10 MR. INGRAM: Thank you.

11 THE COURT: We thank you for your
12 candor, and your time.

13 MR. KING: I would like to serve on
14 a Jury, but I feel that I would not make a good
15 juror.

16 THE COURT: You are just doing what
17 we're asking you to do.

18 MR. KING: I am being honest.

19 THE COURT: We appreciate it. You
20 are excused from any further responsibility.

21 MR. BAILEY: Can I ask one question?

22 THE COURT: Yes.

1 EXAMINATION BY MR. BAILEY OF MR. KING:

2 Q. When you said you were speaking after the
3 Judge started to speak, was it before the
4 Judge admonished you not to talk about
5 the case with anyone? I think that was
6 at the end of the session.

7 A. I think it was at the end of the session, when
8 all I said was that I know too much about
9 this case.

10 Q. You never really discussed the case?

11 A. No.

12 MR. BAILEY: Thank you.

13 THE COURT: Fine. Thank you, Sir.

14 You are excused.

15 (Juror No. 72 excused from the Courtroom.)

16 THE COURT: For the record, the last
17 juror, Mr. King, has been excused for cause,
18 without objection.

19 MR. INGRAM: That is correct.

20 MR. BAILEY: That is correct.

21 (Juror No. 81, Cynthia Sase, entered the
22 Courtroom.)

1 THE COURT: How are you?

2 MS. SASE: Fine.

3 THE COURT: You read that handout
4 that was given to you?

5 MS. SASE: Yes.

6 THE COURT: The purpose of this
7 afternoon will be to allow both sides to ask you
8 questions, primarily in two areas; the one being
9 the question of any pre-trial publicity that you
10 may have been exposed to, and the second part will
11 be on your thoughts concerning the death penalty.

12 As the various attorneys have pointed
13 out, it seems like putting the cart before the
14 horse to get into asking you questions about the
15 death penalty, because we don't know what the Jury
16 is going to do on the guilt or innocence. But, we
17 can't very well have a Jury of 12 people decide the
18 question of guilt or innocence and then start this
19 process because just wouldn't work. So the law has
20 evolved that this is the way we do it.

21 Now, Donna Roberts is charged with two
22 counts of aggravated murder with specifications.

1 Under the law of Ohio, just because a person does
2 murder does not mean that they are facing the death
3 penalty. It is only under certain circumstances,
4 and those are specifications, that have to be
5 proven along with the murder charge before the
6 issue comes up. So, assuming that the State is
7 able to carry its burden of proof, and to prove
8 beyond a reasonable doubt both the aggravated
9 murder charge and the specifications, only then,
10 upon a finding of guilty, would the second phase of
11 the trial come up. If she were found not guilty,
12 that would be the end of it.

13 At that second phase, if this trial would
14 go to that point, then the State always has the
15 burden. They would have to prove beyond a
16 reasonable doubt that the aggravating
17 circumstances, that is the reasons that the Jury
18 should consider imposing the death penalty,
19 outweigh any mitigating factors, which the Defense
20 is permitted to present. Mitigating factors are
21 reasons why the Jury should not impose the death
22 penalty.

1 Some people believe that the taking of a
2 life means that person should forfeit their life.
3 That is not the law of Ohio. Other people could
4 under no circumstances feel that they would be able
5 to sit on a Jury where they would have to make the
6 decision of life or death and that is fine. We're
7 all entitled to our own opinion.

8 To have a fair Jury, we have to have 12
9 people who are going to have a wide range of
10 opinions, no doubt, on the question of death
11 penalty. But 12 who could give assurance to these
12 folks that they are able to set aside their own
13 position and follow the law. That is the important
14 thing. And the law says that if certain things
15 happen, we go to that second phase, that Jury would
16 then have to consider whether or not the death
17 penalty or life imprisonment should be imposed.
18 You get the picture?

19 MS. SASE: Yes.

20 THE COURT: At this time, then these
21 gentlemen are going to be asking you questions
22 along that line.

1 EXAMINATION BY MR. BAILEY OF MS. SASE:

2 Q. Good afternoon. My name is Ken Bailey and I'm
3 Assistant Prosecutor with the Trumbull
4 County Prosecutor's Office, and as I
5 promised you last week, I am joined today
6 by Chris Becker, another Assistant
7 Prosecutor in our office. And the two of
8 us are responsible for prosecuting this
9 particular case on behalf of the people
10 of Trumbull County, and the people of the
11 State of Ohio.

12 And as the Judge said, this is a
13 chance where we get to ask you some
14 questions to make sure that whoever is
15 selected could be fair to both sides,
16 both to the Defendant, and to the people
17 of the State of Ohio. And we ask these
18 questions not because we're snoopy and we
19 like to pry, but to make sure that people
20 can be fair to both sides. Another thing
21 I want to bring out is there aren't any
22 right answers or wrong answers, only

1 open, candid answers to these questions,
2 because we're going to ask you about your
3 opinions and feelings about different
4 things.

5 If, because this is one chance we
6 get to have a give and take here, if you
7 have any questions that are pertinent to
8 what we're doing, you could -- it would
9 be a good time to be asking them during
10 this proceeding and maybe we can get an
11 answer for you to those questions.

12 Because after we're done here today,
13 we're not allowed to have any
14 conversation with you until the entire
15 trial is over. And if the case were to
16 proceed to two different phases, we have
17 to wait to the end of the second phase
18 before you are allowed to come up to us
19 and ask us any questions about what was
20 going on. If you have any of questions
21 in the meantime, Laurie Brown, who is not
22 here now, but she's our bailiff and she

1 will be around during the course of the
2 trial. You could go up to her or you can
3 ask Mary Ann Mills, our Court Reporter,
4 and she will help you with something or
5 the Judge. If we pass each other in the
6 hallway or in the elevator or restaurant
7 or something, we just want you to know
8 that we're not being anti-social and
9 trying to snub you or anything, it is
10 just that under our rules of conduct, all
11 we're allowed to say to you is, "Good
12 morning," or "Good afternoon," under
13 those circumstances until the whole trial
14 is over.

15 And there are a couple of other
16 things. You are not allowed to go out to
17 the scene to do an investigation on your
18 own. Sometimes people watch T.V. or the
19 movies, and they, I think Matlock, they
20 did that once or something like that.
21 And it would cause a mistrial in real
22 life and we wouldn't want to do it all

1 over again. You are not allowed to take
2 notes in the Courtroom. Sometimes in
3 different jurisdictions in the country,
4 they may allow jurors to take notes, but
5 in Ohio, generally, the Judges do not
6 allow that. They want you to pay close
7 attention to the witnesses who are
8 testifying, and their demeanor.
9 Sometimes in other jurisdictions they may
10 allow jurors to submit questions to the
11 Judge to ask the witnesses, and that
12 doesn't happen here. You are pretty much
13 stuck with the questions that are asked
14 by the lawyers, and we gear our questions
15 basically to the elements of the crime
16 that we're going to be talking about.

17 Now, let me get to two issues first.
18 This issue of pre-trial publicity. I
19 notice you subscribe or you get the
20 Warren Tribune and you read it daily
21 pretty much. And you had some knowledge
22 of this case from the newspaper and maybe

1 T.V. You watch I believe it was channel
2 27, the local news on occasion?

3 A. Yes.

4 Q. And how much did you find out about this case
5 from the media?

6 A. That mostly was from the media. That is the
7 only way I really knew about this story.

8 Q. What were you aware of? I mean from the media
9 what facts basically did you become aware
10 of?

11 A. That it was a murder trial. They were
12 involved in a murder.

13 Q. Did you skim it or did you pay very close
14 attention?

15 A. I kind of skipped it over. I read it over,
16 but it wasn't like it was something that
17 was really personal.

18 Q. Sort of blended together with all of the other
19 murder cases that have been in the paper
20 lately?

21 A. Sort of.

22 Q. Now, the Judge instructs you not to, once you

1 come into this process -- last week the
2 Judge instructs you not to be reading the
3 paper or watching T.V. regarding this
4 case. If something comes on, you have
5 got to walk out of the room or turn off
6 the T.V. or stack the newspapers up until
7 this is all done, which might be an
8 interesting experience to have your
9 family save the newspapers for you and
10 then when it is all over, read the
11 papers. As you look around the Courtroom
12 today, there's nobody here from the news
13 media. And that is the way it has been
14 most of the proceedings so far. But, I
15 imagine, when the trial actually starts,
16 from time to time we'll see
17 representatives from the different
18 newspapers come in, and the reporters may
19 be here or cameraman from the different
20 T.V. stations. And they will be here for
21 maybe three minutes or five minutes, just
22 long enough. They don't photograph the

1 jurors, they photograph the witness maybe
2 or the Judge or the lawyers or the
3 Defendant. And then they will be on
4 their way and they will do a feature
5 based on those couple of minutes that
6 they have been here. And because of
7 that, you are aware that they will have
8 missed everything that was asked and the
9 questions that were answered before they
10 got here and the questions that were
11 asked and the questions that were
12 answered after they left here, so
13 whatever is in the paper, since they try
14 to make a big story out of it, it may be
15 somewhat misrepresentative of what
16 happens in Court. As a matter of fact,
17 if you were to read the newspapers
18 afterward, you might say, "Gosh, I sat in
19 Judge Stuard's Court for the entire trial
20 and especially the days that the
21 reporters were here, and it looks like
22 whoever covered this story was covering a

1 trial in Judge McKay's Court, rather than
2 Judge Stuard's Court." So because of
3 that, because of those misrepresentations
4 or inaccuracies the Court asks you, the
5 Court tells you not to read the papers or
6 watch T.V. and basically to start out
7 here with a blank slate. To put aside
8 whatever you might have learned before,
9 and try this case based solely on the
10 testimony of the witnesses that you
11 receive, the evidence that comes in, and
12 the instructions of law given to you by
13 the judge. Can you do that?

14 A. Yes.

15 Q. Sort of like going back to school and starting
16 with a blank slate and whatever is
17 written on that slate, has to be written
18 in school, right here in this Courtroom.
19 It is the only fair thing to both sides.

20 It may well be that during the
21 course of the trial you may recollect
22 after hearing some testimony, you may

1 say, "Gosh, I read that in the paper, but
2 I'm going to put aside what I read in the
3 paper and base it solely on what I heard
4 in Court," even though it may reinforce
5 what you heard before. Now, based on
6 what you read before or skimmed before, I
7 take it you didn't form any opinion as to
8 this Defendant's guilt or non-guilt?

9 A. No.

10 Q. And the other issue that we're going to ask
11 some questions about are your views on
12 the death penalty as a punishment. I
13 take it, reading your questionnaire, you
14 are in favor of the death penalty for
15 premeditated and cruel murders, and you
16 have held this view for awhile?

17 A. Yes.

18 Q. And what is that based on? Is it based on a
19 religious, moral, ethical, personal
20 belief or what, combination of those?

21 A. Combination of those, yes.

22 Q. Combination of which factors, basically?

1 A. Personal belief. I guess religious in some
2 respect.

3 Q. How do you mean? You indicated you are
4 Methodist, right, United Methodist, and
5 the Methodist Church, it doesn't take a
6 position one way or another on capital
7 punishment?

8 A. I believe they are against it.

9 Q. But that doesn't bother you that the church
10 might be a contrary view to your view?

11 A. No.

12 Q. You make up your own mind?

13 A. Yes.

14 Q. And your view is in favor of the death penalty
15 in certain cases?

16 A. Yes.

17 Q. You have discussed your position on the death
18 penalty with whom over the years, in
19 school or in church or with family or
20 friends?

21 A. Yes.

22 Q. What would give rise to those discussions?

1 A. Something that we would read in the paper,
2 watch on T.V. and say, well, we would get
3 upset about something that we saw that
4 just didn't seem fair.

5 Q. Like how do you mean didn't seem fair, which
6 way?

7 A. Didn't seem fair that they were allowed to
8 live and they had murdered someone.

9 Q. Now, you understand that under our system, the
10 State legislature writes the law. They
11 set out the parameters, what are going to
12 be crimes and what the punishment are for
13 those particular crimes and not every
14 killing is punishable by the death
15 penalty in Ohio. It is rare when we get
16 to a death penalty case. Because there
17 are all kinds of killings. Some killings
18 may be innocent. For example, where
19 somebody is chopping wood, and the head
20 of the axe flies off and kills somebody.
21 That would be an accident, right? And
22 you wouldn't want to punish anybody for

2 | A. No.

9 | A. No.

12 | A. Yes.

20 A. No, not really, no.

21 Q. Let's say a wife comes in, comes home and
22 catches her husband in bed with another

1 woman, and there's a gun just sitting on
2 the table there, and she picks it up
3 because she's so angry and shoots him.
4 That may be a voluntary manslaughter or
5 something. But I take it, you wouldn't
6 impose the death penalty for that type of
7 offense?

8 A. No, not if it was an accident or it was a
9 crime of passion.

10 Q. Now, in Ohio, if somebody were to stand on the
11 Courthouse steps, and let's say I were to
12 stand on the Courthouse steps, and say,
13 "I'm going to kill my co-counsel, Chris
14 Becker tomorrow at noon." That may be a
15 planned murder, premeditated or killing
16 with prior calculation and design, but
17 without more, and let's say I did it,
18 Chris wouldn't be too happy, but that may
19 be killing with prior calculation and
20 design. But the way our laws are written
21 by the legislature, that wouldn't be an
22 offense that would be punishable by the

1 death penalty. And you may feel, because
2 it is a premeditated murder, maybe it
3 should be punishable by the death
4 penalty, but in that, would you be able
5 to put aside your own personal belief and
6 follow the law given to you by the Judge?

7 A. Yes.

8 Q. Now, you read that handout that was given to
9 the jurors downstairs?

10 A. Yes.

11 Q. So you understand and the Judge has told you
12 that the Defendant here is charged with
13 four different crimes. There are two
14 charges of aggravated murder, one of
15 these aggravated murder charges is that
16 it is a purposeful killing of another
17 person with prior calculation and design.
18 And there's a second charge of killing
19 the same person, purposely, in the course
20 of a special felony; in this case, an
21 aggravated burglary and/or aggravated
22 robbery.

1 So you can see we have one killing,
2 but we have two different theories that
3 the State is pursuing. The State is
4 allowed to do that. We have elected to
5 proceed that way with two separate
6 charges of aggravated murder. And each
7 of these crimes is composed of certain
8 elements or essential component parts,
9 sort of like the ingredients in a recipe.
10 I take it you bake on occasion?

11 A. Occasionally.

12 Q. And you are familiar with ingredients in a
13 recipe? The same thing with crimes, each
14 crime has its own recipe. Attached to
15 these charges of aggravated murder,
16 attached to each charge are two
17 specifications. Specification is just a
18 fancy word that means a special, extra
19 finding of fact for the Jury to consider.
20 And these specifications, the first is of
21 aggravated burglary, that the aggravated
22 murder was committed during an aggravated

1 burglary and that the Defendant committed
2 the aggravated murder with prior
3 calculation and design. The second
4 special finding or specification is that
5 the aggravated murder was committed
6 during an aggravated robbery as opposed
7 to an aggravated burglary and it was
8 committed with prior calculation and
9 design. So you have got these two
10 special findings. If the Jury, you and
11 the other 11 jurors find the Defendant
12 guilty beyond a reasonable doubt of the
13 crime called aggravated murder and one or
14 more of these specifications, then we
15 would proceed to a second phase. Now, in
16 the first phase, the only issue is guilt
17 or non-guilt. Punishment would never
18 come up in the first phase, because it is
19 not relevant. You wouldn't have decided,
20 did she do it or not? Can we prove that
21 she did it? And it wouldn't be fair to
22 consider punishment in the first phase,

1 right?

2 A. Right.

3 Q. If we move then to a second phase, let's say
4 we have met our burden of proof in the
5 first phase, and we move to a second
6 phase. Then the issue there is what is
7 the appropriate punishment for this
8 Defendant, for this crime. And there are
9 four options that you are aware of,
10 right?

11 A. Yes.

12 Q. Death penalty, life in prison with no parole
13 eligibility, life with eligibility for
14 parole after 30 full years, and life with
15 parole eligibility after 25 full years.

16 Now, you understand that the death
17 penalty is not an automatic punishment
18 for somebody who has been found guilty in
19 the first phase?

20 A. Right.

21 Q. Because in a second phase, you could hear the
22 same evidence, or maybe more evidence

1 presented. And you would be asked to do
2 a balancing test. You would have to
3 weigh certain things. You would have to
4 weigh the aggravating circumstance or
5 circumstances on one side of the scale
6 against the other side, whatever
7 mitigating factors were presented.
8 Mitigating factor would be something that
9 would work in favor of the Defendant, and
10 would work against the imposition of the
11 death penalty as a punishment. I don't
12 know what those are at this point, it is
13 not relevant. But whatever is presented,
14 you would have to consider.

15 Now, it is entirely up to you and
16 the other jurors how much weight you want
17 to give to these aggravating
18 circumstances, or mitigating factors.
19 You might decide that one of these
20 circumstances or factors has a whole lot
21 of weight, in tipping the scale. And on
22 the other hand you might decide that one

1 of these factors may weigh about as much
2 as a feather. That is entirely up to
3 you. Now, if you and the other jurors
4 find by proof beyond a reasonable doubt,
5 that the aggravating circumstance or
6 circumstances outweigh these mitigating
7 factors, then you must return a verdict
8 as to the death penalty. And in that
9 case you wouldn't go on to consider the
10 life factors. Because then we would have
11 met our burden of proof in the second
12 phase, and proved that the aggravating
13 circumstance outweighs the mitigating
14 factors. In the event you find that we
15 didn't prove it beyond a reasonable doubt
16 that the aggravating circumstance
17 outweighs the mitigating factors, then
18 you would go on and look at the other
19 three life sentences and you would have
20 to treat them equally to start out with.
21 And then, you would look at everything
22 and make your own determination as to

1 what is appropriate, which of those three
2 life sentences. You think you could do
3 that?

4 A. Yes.

5 Q. You might, under your own personal belief
6 system, you might favor the death penalty
7 for certain crimes, but could you set
8 aside your personal belief system and
9 follow the law and judge this case solely
10 on the facts and the evidence presented,
11 and the law given to you by the Judge?

12 A. Yes.

13 Q. Now, I mentioned elements of a crime. The
14 ingredients in the recipe, the Judge is
15 going to instruct you at the end of this
16 case as to what those elements are. He
17 will give you the law and you are bound
18 to follow his instructions of law. But
19 I'm going to give you a for instance.
20 Let's take a for instance of aggravated
21 murder with prior calculation and design.

22 The State would have to prove

1 certain key ingredients and one of them
2 would be that it happened on or about a
3 certain date, December 11, 2001. The
4 second element would be that it happened
5 here in Trumbull County, Ohio. And the
6 reason we have to prove that it happened
7 in this county and so we could try this
8 case in this Courthouse, rather than down
9 in Cuyahoga County.

10 The third element is identification.
11 That the person who committed this crime
12 is the person who is sitting at that
13 table. Somebody is going to have to
14 point her out. The fourth element would
15 be that she acted purposely, basically on
16 purpose, but the Judge will give a
17 detailed legal definition at the end of
18 this case.

19 Fifth is that she caused the death
20 of a living person. In this case a
21 fellow by the name of Robert Fingerhut.
22 And six is that she acted with prior

1 calculation and design.

2 Now, we have to prove those
3 particular elements, so that you are
4 firmly convinced of the truth of the
5 charge to a moral certainty. And the
6 Judge is going to give a definition of
7 proof beyond a reasonable doubt. All of
8 these legal terms.

9 But basically, you use your reason
10 and your common sense in coming to that
11 conclusion. You are used to doing that.
12 You do that at work, and you teach
13 sometimes, you substitute. What do you
14 teach?

15 A. I used to teach English.

16 Q. What grade?

17 A. High school, Junior high.

18 Q. Literature and grammar?

19 A. Yes.

20 Q. Composition?

21 A. Yes.

22 Q. Still do that?

1 A. No.

2 Q. Now, we're talking about the elements of the
3 crime. The Defendant here, the charge
4 here is not that the Defendant is a
5 trigger person in this case, but rather
6 the charge as a complicitor, somebody who
7 solicits or procures another person to
8 commit an offense or aids and abets
9 another person, encourages, helps,
10 strengthens another person in some way,
11 in committing the actual offense. And
12 the charge here is that the fellow by the
13 name of Nate Jackson is the one who
14 actually killed the victim. The fellow
15 who actually broke into the house or
16 trespassed in the house. The person who
17 actually stole the car.

18 The Defendant is charged as an aider
19 and abetter, complicitor, solicitor, to
20 kill her ex-husband for the insurance
21 money. Now, the fact that she's charged
22 as an complicitor and is not charged as

1 the actual trigger person, would that
2 affect your ability to follow the law as
3 to let's say we get to a second phase, as
4 to the imposition of the death penalty if
5 you deem it appropriate under the facts
6 and the law?

7 A. Would that?

8 Q. Would you be able, if we were able to prove
9 all of the elements of the crime and then
10 specifications, and that the
11 specifications outweighed the mitigating
12 factors beyond a reasonable doubt, would
13 you be able to come back with a death
14 penalty verdict if you felt it was
15 appropriate?

16 A. Yes.

17 Q. Now, in addition to the crimes of aggravated
18 murder with these specifications, there
19 are two other charges that the Judge
20 mentioned. Aggravated burglary and
21 aggravated robbery. And basically, the
22 difference between those charges, the

1 Judge will define those for you.

2 Basically an aggravated burglary is
3 somebody trespasses in an occupied
4 structure; could be a dwelling house
5 where somebody lives, with the intent to
6 commit an offense, like an aggravated
7 murder or theft or something inside. And
8 the perpetrator may be armed with a
9 weapon like a gun, and may cause serious
10 physical harm, like killing the victim
11 inside. That is an aggravated burglary.
12 It deals with the dwelling house,
13 trespassing.

14 An aggravated robbery, on the other
15 hand, doesn't deal with the structure, it
16 rather deals with the use of force or
17 threat of force against the person, to
18 maybe steal something. And the
19 perpetrator may be armed with a weapon
20 and may cause serious physical harm to
21 the victim. You understand the
22 distinction?

1 A. Yes.

2 Q. Now, attached to these two charges, the
3 aggravated burglary and the aggravated
4 robbery, are specifications of a firearm,
5 a working gun was used. And again, you
6 understand the Defendant is charged as a
7 complicitor. She's not charged with the
8 person that physically broke in.

9 Now, there are different types of
10 evidence that we can use to prove our
11 case. There's something that we call
12 direct evidence where a witness can come
13 in and testify as to what he or she is
14 going to use through the use of the five
15 senses. "I heard the gunshot and it was
16 loud. I smelled the smoke and it was
17 acrid. I touched the body and it was
18 cold." On the other hand, there's some
19 round about evidence that we can use, I
20 think you would agree, most serious
21 crimes, that are planned, are not planned
22 out in public with a whole lot of people

1 walking around. Like if you are going
2 to plan a murder, you are not going to
3 tell the whole world about it usually,
4 right?

5 A. Right.

6 Q. And because of that, we have to use
7 circumstantial evidence where you are
8 presented with a fact or series of facts,
9 and then you are asked to draw a logical
10 deduction to another fact or series of
11 facts. Let me give a for instance.

12 Let's say you live in a two story
13 house. You go to bed at night and your
14 bedroom is on the second floor and you
15 look out your bedroom window across the
16 neighborhood and it was a beautiful
17 evening. Moon is beaming, not a cloud in
18 the sky. You draw the blinds, you get
19 into bed, and before you fall asleep, you
20 hear the weather forecast that says,
21 "Folks, there's a cold front coming in,
22 and we're going to get a storm

overnight," and you fall asleep. And
sometime during the night, you are
awakened by a bright flash from outside
the window. You can't see what it is
because the blinds are covering it.
There's a bright flash and five seconds
later there's boom sounds in the sky and
a minute goes by and there's another
bright flash outside and closer in time,
another booming sound and suddenly
there's a great big flash outside and
great big ripping boom above the house
and pitter patter on the roof and you
fall back asleep. Sometime later you
awaken, you go to the window, open the
blinds and you look out, beautiful day
outside. The sun is beaming, not a cloud
in the sky. But as far as you can see
across the neighborhood, the streets are
running with water, drops of water are
dripping off the leaves of the trees.
The rooftops are all wet, puddles all

1 over and you know what happened during
2 the night, don't you? What happened?

3 A. It rained.

4 Q. There was a thunder storm and you know that
5 beyond any reasonable doubt, right?

6 A. Yes.

7 Q. Now there's room in there for some possible or
8 imaginary doubt. You can imagine that
9 Alf and his Martian buddies came by in a
10 flying saucer, sprinkled the ground with
11 some wet stuff and put on a sound and
12 light show. But you know that is foolish
13 or imaginary, and all that really
14 happened was there was just a thunder
15 storm. And even though you didn't see
16 the lightning with your own eyes, and
17 seen the water coming down with your own
18 eyes, based on all of the other facts and
19 circumstances that you were aware of, you
20 know that there was a thunder storm.
21 That is circumstantial evidence.

22 And you understand we can prove our

1 case by circumstantial evidence. It is
2 just as good as direct evidence, if we
3 can convince you that it proves the
4 elements of the crimes charged, by proof
5 beyond a reasonable doubt. Now this term
6 reasonable doubt sometimes -- one example
7 that is given is about a box and it is
8 filling up that box so that there's
9 enough evidence in there, so that you are
10 firmly convinced of the truth of the
11 charge to a moral certainty. Now it
12 certainly would be more than halfway in a
13 civil case for money damages. Somebody
14 is in an auto crash or something like
15 that, you would have to fill the box just
16 over half. But in a criminal case, the
17 burden is a lot higher. It is not all
18 the way to the top of the box, we don't
19 have to do that. It is not 100 percent
20 proof, it is not proof beyond all doubt
21 or beyond a shadow of a doubt, because
22 there's no such animal in criminal law as

1 shadow of a doubt. Alfred Hitchcock made
2 a movie like that, but it's a movie. We
3 have got to fill that box up pretty full,
4 so that it convinces you, so that you are
5 firmly convinced that we're right.

6 Each juror may have a different
7 feeling about how high that evidence
8 should be in that box. But again it is
9 not all the way to the top. It is
10 getting pretty close though.

11 Now, you understand there's another
12 concept here in criminal law. In our
13 system of juris prudence, and it says
14 that the Defendant is presumed innocent
15 as are all other Defendants tried in this
16 Courtroom. She's cloaked by that
17 presumption of innocence, and that cloak
18 of the presumption of innocence shields
19 her all the way through these proceedings
20 unless and until, you are back in your
21 Jury room and you look at all of the
22 evidence and the testimony, and you say,

1 "Gosh, it proves her guilty." At that
2 point, the presumption of innocence would
3 be gone, right?

4 A. Right.

5 Q. Now, I think you would agree that all
6 criminals are not necessarily rocket
7 scientists, right?

8 A. Right.

9 Q. Sometimes they are kind of silly and sometimes
10 they are downright stupid. I take it you
11 have heard it over time about the burglar
12 who leaves his wallet in the residence or
13 the bank robber who goes in with a stick
14 up note, written on the back of an
15 envelope and hands it to the teller and
16 runs out and you turn the envelope over
17 and there's his name and address on
18 there, right?

19 A. Yes.

20 Q. And when we talk about circumstantial
21 evidence, there are different types of
22 things that we can use. Because we use

1 circumstantial evidence, because you
2 can't always get inside the mind of a
3 Defendant, but sometimes, if you have
4 evidence like maybe letters or tapes of
5 phone conversations, that might show what
6 a Defendant is thinking, right?

7 A. Yes.

8 Q. Now, if we prove to you -- let's say we get to
9 a second phase. And we prove to you,
10 that not only is the Defendant guilty of
11 aggravated murder with a specification,
12 but that the aggravating circumstance
13 outweighs the mitigating factors beyond
14 any reasonable doubt. So that the death
15 penalty in your mind, and the mind of
16 other jurors is the appropriate
17 punishment. Would you be able to sign a
18 verdict form recommending the death
19 penalty in this case?

20 A. Yes.

21 Q. And let's say after you return that verdict,
22 the Judge asks you if it is your verdict,

1 would you be able to say, yes, it is your
2 verdict?

3 A. Yes.

4 Q. You believe people should be held accountable
5 for their actions?

6 A. Yes.

7 Q. Now, I mentioned you can't take notes and you
8 have got to pay really close attention to
9 the testimony here, because you are going
10 to have to remember it. Mary Ann may be
11 a very good Court Reporter, but we don't
12 have a million dollar transcribing system
13 that they have in the O.J. Simpson case
14 or some other high publicity case and we
15 don't get instant transcripts. It takes
16 a long time to prepare a transcript, so
17 you and the other jurors are going to
18 have to rely upon your collective
19 recollection as to what the testimony
20 was, what the evidence is. So, you can't
21 ask the Judge for a transcript of the
22 proceedings because you are not going to

1 get one. Would you be able to pay close
2 attention to that?

3 A. Yes.

4 Q. It is like you tell your class, pay close
5 attention?

6 A. Yes.

7 Q. Now, at the conclusion of the first phase of
8 this trial, you are going to be
9 sequestered. That means you will be kept
10 together, all of the jurors are kept
11 together. And while you deliberate you
12 won't be able to go home during that
13 time, and then it goes overnight, you
14 will be taken to a hotel and be lodged
15 there and come back the next day and
16 begin your deliberations again or
17 continue on with your deliberations. And
18 each Jury is different. Some Juries may
19 take a couple of hours, some Juries may
20 take days to reach a decision. You would
21 give whatever time is necessary, I take
22 it, to reach a decision?

1 A. Yes.

2 Q. And the sequestration doesn't bother you?

3 A. No.

4 Q. That wouldn't cause any undue hardship?

5 A. No.

6 Q. Let's say that you and the other jurors find
7 the Defendant guilty of aggravated murder
8 and one or more of these specifications
9 in the first phase. Then you go home and
10 after a short period of time, within a
11 week probably, you would be coming back
12 in for the second phase. And that
13 usually takes one to three days, and
14 then, you would be sequestered again.
15 And the amount of time that that would
16 take, each Jury is different. Whatever
17 time that the Jury takes, that second
18 sequestration then wouldn't cause any
19 undue hardship for you?

20 A. No.

21 Q. Now, let's say as, during the course of the
22 trial, as you come face to face with the

1 Defendant, perhaps as her chair is turned
2 towards you, you are going to become
3 better acquainted with her. Now my
4 question to you is this. When you go
5 inside that Jury room to deliberate on
6 your verdict, can you set aside all
7 thoughts whatever of feelings of sympathy
8 for this Defendant and base the decision
9 on the testimony and the evidence that
10 you have been given and the instructions
11 of law given to you by the Judge, and lay
12 aside all thoughts of sympathy that you
13 may have?

14 A. Yes.

15 Q. Are there any other pressing matters at home
16 or work that might affect your ability to
17 concentrate on the evidence?

18 A. No.

19 Q. Now, I take it you would agree that there are
20 certain obligations that we have in this
21 country to make sure our system works.
22 One of these obligations when it is

1 election time, we try to find out as much
2 as we can about the issues, the
3 candidates and cast a ballot. It is one
4 of our rights that we have got under our
5 system, and it is also an obligation, if
6 we're at war, then we may be called to
7 serve in the military. Right now we have
8 got men and women overseas in different
9 countries doing their duty.

10 There's a third obligation that when
11 we're summoned in as jurors in cases to
12 serve in, we're able, as long as it
13 doesn't cause an undue economic or
14 personal hardship on you, to make sure
15 that our system works, it is important
16 that we get people from all walks of life
17 to serve as jurors. Would you be willing
18 to undertake that obligation to serve as
19 a juror in this most serious of criminal
20 cases?

21 A. Yes.

22 MR. BAILEY: Thank you very much.

1 EXAMINATION BY MR. INGRAM OF MS. SASE:

2 Q. Good afternoon. How are you? My name is
3 Jerry Ingram. John Juhasz and I share
4 the responsibility of representing Donna
5 here, who is on trial for her life. And
6 this is obviously a very serious matter.
7 You would agree with that?

8 A. Yes.

9 Q. John and I think that we should take every
10 reasonable precaution in selecting a fair
11 minded Jury, the same type of Jury that
12 you or I would want if we were on trial.
13 That sound fair to you?

14 A. Yes.

15 Q. This is the only opportunity we're going to
16 have to get to know one another, and
17 determine whether you are comfortable
18 sitting on this Jury. Do you understand
19 that?

20 A. Yes.

21 Q. After this, we can certainly talk at you, but
22 we can't talk to you. And more

1 importantly than us being able to
2 communicate with you, you are able to
3 communicate with us. So, if there's
4 anything you would like to say, any
5 information you would like to volunteer,
6 you really should do that. Will you,
7 please?

8 A. Yes.

9 Q. Now this is a little bit like a job interview.

10 Except when you went to Wal-Mart to get
11 that job, you chose to go to Wal-Mart.
12 Here, someone spun a Jury wheel and your
13 name was kicked out and we sent you a
14 special invitation by way of a summons.
15 But we're interviewing you today for like
16 the most important job there is. The job
17 of finding the truth and perhaps
18 determining whether another human being
19 lives or dies. Not everyone is up to
20 that responsibility. Some people have
21 already told us that it is too much for
22 them. My first question to you is, how

1 do you feel about being asked to assume
2 that responsibility?

3 A. It is a big responsibility. I think I can be
4 fair. I think I can do this.

5 Q. I'm sure you understand. I want to emphasize
6 this. Our entire justice system is
7 predicated upon the fact that we get 12
8 good people to come in here and fairly
9 determine the facts of the case. You
10 understand that?

11 A. Yes.

12 Q. And you and I should talk for a moment about
13 some ground rules. I noticed while I was
14 sitting over there that you have a
15 tendency to nod a lot rather than
16 verbally respond. In normal
17 conversation, we do that, but it drives
18 Mary Ann crazy. So could you please make
19 an effort to verbalize your responses?

20 A. Yes.

21 Q. You actually have a job responsibility now.
22 And your job responsibility now is to

1 openly and honestly tell us if you would
2 have a problem giving either side a fair
3 shake at any point in these proceedings.
4 Do you understand that?

5 A. Yes.

6 Q. And do you understand why it is important that
7 you let us know if you would have such a
8 problem?

9 A. Yes.

10 Q. There are no right or wrong answers. The only
11 mistake you can possibly make in our
12 conversation is if you tell me what you
13 think I want to hear, rather than how you
14 honestly feel. Do you understand that?

15 A. Yes.

16 Q. So what I would ask you to do is whenever I
17 ask you a question that causes you to
18 hesitate in your response, because I'm
19 going to ask you some hard questions.
20 Whenever I ask you a question that causes
21 you to hesitate in your response, please
22 take a couple of seconds, search your

1 mind, search your soul and give me an
2 honest answer. Fair enough?

3 A. Fair enough.

4 Q. What all do you recollect seeing, reading or
5 hearing about this case?

6 A. When it was first in the paper, I read about
7 the Defendant.

8 Q. Donna Roberts?

9 A. Yes. And that she was involved in some kind
10 of murder. And she had hired someone to
11 do it.

12 Q. That was back in December of 2001?

13 A. Yes.

14 Q. Did you read any newspaper stories since the
15 initial coverage, between then and today?
16 Have you read any stories about this
17 case?

18 A. Yes. About the man that was accused, Nate
19 Jackson, I read a little bit about his
20 trial.

21 Q. What do you recollect reading about his trial?

22 A. That he was found guilty and he was sentenced.

1 Q. Do you recall what the sentence was?

2 A. I believe it is life in prison.

3 Q. In the last week or so, have you been exposed
4 to any news coverage about this case?

5 A. No.

6 Q. We're all human. And what we're exposed to in
7 our daily lives leaves us with thoughts,
8 feelings or impressions. That sound
9 right to you?

10 A. Yes.

11 Q. As a result of what you may have seen, read or
12 heard about this case, are you left with
13 any impressions about this case?

14 A. I don't know how to answer that.

15 Q. It is a hard question. I know it is difficult
16 to answer. So I guess I'm just going to
17 ask you to do your best.

18 A. Do I have an impression?

19 Q. Yes.

20 A. I just was stunned that a woman was involved
21 and that it had to do with her
22 ex-husband.

1 Q. You are stunned because a woman was involved?

2 And don't look so sad. You are looking

3 sad. As long as you are honestly

4 answering the questions put to you,

5 there's no reason to feel bad whatsoever.

6 Honest. You want a glass of water? You

7 want to take a two minute break?

8 A. I am okay.

9 Q. You have me feeling like an ogre up here. I'm

10 sorry. The fact that you were stunned

11 that a woman was involved. Does that

12 mean that you have an impression that

13 Donna was involved?

14 A. Yes.

15 Q. An impression that she was involved in the

16 killing of her ex-husband?

17 A. Not the killing, maybe the planning.

18 Q. Does the fact that Nate Jackson was convicted,

19 that obviously leaves you with an

20 impression, doesn't it?

21 A. Yes.

22 Q. What impression does that leave you with?

1 A. That he was guilty.

2 Q. Does it leave you with any impression about
3 Donna?

4 A. No, not really. I don't think that she was
5 automatically guilty.

6 Q. Let's try to work from there. There's a
7 ground rule that you have to understand.
8 You cannot let me put words in your
9 mouth. So if any point in time, you find
10 I am doing that, will you please stop me?

11 A. Yes.

12 Q. The words that I believe I said, we were going
13 to work from was that she's not
14 automatically guilty. Is that right
15 first of all?

16 A. Yes.

17 Q. From what you have read about her, or seen
18 when I say read, I mean read or seen, is
19 that okay?

20 A. Fine.

21 Q. From what you read about Donna and from what
22 you read about Nate, do you have an

1 impression that she's probably guilty?

2 A. Probably.

3 Q. So the answer is yes?

4 A. Yes.

5 Q. Can you tell me how long you have held that
6 impression?

7 A. I probably believe after he was convicted.

8 Q. So for a couple of months or so. I don't know
9 when that was.

10 A. Somewhere around there.

11 Q. Do you still hold that impression today?

12 A. Yes.

13 Q. Because you believe -- strike that. Ignore
14 that. Because you have the impression
15 that Donna is probably guilty? Do you
16 expect Donna to convince you that she's
17 not involved?

18 A. Yes.

19 Q. So in your mind, it is the obligation of the
20 Defense in this case to convince you that
21 Donna Roberts was not involved in the
22 death of Robert Fingerhut?

1 A. Yes.

2 Q. That is an open and honest response, right?

3 A. Right.

4 Q. And that is the way you really feel?

5 A. Yes.

6 Q. And I would imagine there's nothing I can
7 really say that would change your mind in
8 that respect, is there?

9 A. Not really, no.

10 Q. If I can't change your mind. I imagine
11 there's not too much that Mr. Bailey here
12 said that can change your mind either,
13 because that is how you feel?

14 A. That is how I feel.

15 Q. When he was talking with you, did he have some
16 guy kill somebody with the head flying
17 off of an axe?

18 A. Yes.

19 Q. And did he put that man in jail when he was
20 talking to you about him?

21 A. No.

22 Q. I thought he did. That is the first time I

1 have seen somebody going to jail for
2 accidental killing. Keeping in mind,
3 what you have just told us about your
4 impressions of Donna and about your
5 expectations that the Defense should
6 convince you that she was not involved.
7 If you were driving down the street, and
8 you blow a stop sign, and you get
9 involved in an automobile accident, and
10 as a result of that automobile accident,
11 someone passes away. That is a crime.
12 But the culpable mental state is
13 negligence, but it is a crime. Something
14 unfortunate like that happens to you.
15 And instead of finding yourself there, in
16 a juror chair, you find yourself sitting
17 over here defending yourself against
18 accusations leveled by the State of Ohio.
19 If you were sitting over here and you
20 heard a prospective juror say, "I have
21 these impressions and I have these
22 expectations," would you want that juror

1 to hear your case?

2 A. No.

3 Q. In light of that, do you think it is best that
4 I ask that you be excused?

5 A. Yes.

6 Q. I do, too. I wanted to know if you shared
7 that opinion.

8 MR. INGRAM: I respectfully request
9 that Miss Sase be excused.

10 THE COURT: Any objection?

11 MR. BAILEY: I think it is
12 premature. I think there's a question that can be
13 asked.

14 THE COURT: Do you wish to ask a
15 question?

16 MR. BAILEY: Yes.

17 EXAMINATION BY MR. BAILEY OF MS. SASE:

18 Q. If the Judge tells you that the Defendant is
19 presumed innocent under our system of
20 law, and it is okay to hold your own
21 opinions, but, to take part in this
22 proceeding, you have to be able to

1 actually take your own opinions and set
2 them aside and start out here with a
3 blank slate, and actually presume her
4 innocent. For the entire proceedings,
5 and put the burden of proof on us, so
6 that if we mess up, and we don't, if we
7 leave out one of these elements, like it
8 happened in this county, you would have
9 do find her not guilty. Would you be
10 able to do that?

11 A. Yes. It would only be right.

12 Q. It would only be right. Under our system of
13 justice. Can you set aside your personal
14 opinion here, anything you have formed
15 from reading the newspapers or talking to
16 folks, watching T.V., and start out with
17 a blank slate here, and give this
18 Defendant the benefit of the presumption
19 of innocence, so that you understand she
20 doesn't have to prove anything. The
21 opinion you formed may be right, it may
22 be wrong, we don't know, because it is

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1 based on newspaper reports and stuff that
2 aren't the most accurate in the world.
3 And just like you would want to be, if
4 you were here on a traffic case, or your
5 car slid on the ice or something, and you
6 were charged with killing somebody,
7 negligent type of vehicular homicide,
8 maybe you were going too fast, you would
9 like to have that same presumption,
10 right?

11 A. Yes.

12 Q. You think you are actually physically able,
13 mentally able to set aside that opinion
14 that you formed before and come here with
15 a fresh slate in the Courtroom? We're
16 asking you to perform like mental
17 gymnastics, going into a classroom and
18 starting over there. You could do that?

19 A. Yes.

20 THE COURT: I'm going to grant the
21 challenge for cause over the objection of the
22 State. This lady has done everything that we have

1 asked her to do and that is to be very truthful.
2 She struggled here with some of the questions that
3 have been put. Only by the art of Mr. Bailey's
4 questioning, does there appear to be any great
5 entrenchment from that. But Ma'am, you have done
6 what we have asked you to do and that is the most
7 we can expect. You are excused. We thank you very
8 much for your time.

9 (Juror No. 81 excused from the Courtroom.)

10 (Juror No. 85, Shirley Biel, entered the Courtroom.)

11 THE COURT: Good afternoon. You
12 read the handout that was given to you?

13 MS. BIEL: I read it more than once,
14 because like it wasn't sinking in.

15 THE COURT: Good for you.

16 MR. INGRAM: That reflects totally
17 on our writing of that.

18 THE COURT: As you know, Donna
19 Roberts, the lady sitting over here to my right is
20 charged with two counts of aggravated murder and
21 those counts have specifications attached to them.
22 Under Ohio law, a person who does murder is not

1 necessarily facing the death penalty, but if there
2 are specifications, those are additional things
3 that the State has to prove beyond a reasonable
4 doubt, if those are attached. And if the State
5 proves the guilt first and the specification, then
6 the trial has to go to a second phase, wherein the
7 Jury has to determine the issue of capital
8 punishment. And at that stage, it is incumbent
9 upon the State again by the burden of proof known
10 as beyond a reasonable doubt, to present
11 aggravating circumstances which are reasons why
12 they are trying to convince the Jury to impose the
13 death penalty. At that time, the Defense has an
14 opportunity, if they care to, to present mitigating
15 factors, and that would be reasons why the Jury
16 should not impose the death penalty.

17 The Jury is called upon to consider those
18 factors and circumstances, and to make a
19 recommendation to the Court of either death, life
20 in prison without chance of parole and two other
21 lesser life imprisonments with the possibility of
22 parole.

1 Everyone has some opinion on the death
2 penalty. There are those who think that a person
3 who does murder should forfeit their life. That
4 isn't the law of Ohio. That person could not be
5 fair to the Defendant, because the Defendant has
6 the right, if we get to that stage, to have the
7 Jury make that balance. To the other extreme,
8 there are people who feel that under no
9 circumstances could they participate in any
10 proceeding where a person's life hung in the
11 balance. A person of that belief could not be fair
12 to the State. So what we're trying to seek here
13 are 12 people, all of whom will have some opinion
14 one way or another on the death penalty. But who,
15 if those opinions are at variance with the law,
16 they will feel comfortable with giving assurance
17 that they could set that personal opinion aside,
18 and follow the law. Nobody gets a fair trial
19 unless all 12 jurors follow the law.

20 The other issue is that about any
21 possible prejudice or bias that might be caused
22 because of pre-trial publicity that any juror was

1 exposed to. Before we get to all of that, I would
2 like to ask you. I notice on your questionnaire,
3 you say that you are caring for your 93 year old
4 mother-in-law.

5 MS. BIEL: I do.

6 THE COURT: This case could take two
7 weeks, into the third week, possibly into the
8 fourth week. Would that be something that you
9 would be able to work around?

10 MS. BIEL: If I can get some other
11 family members to help. It shouldn't be.

12 THE COURT: We're going to have to
13 have you come back next Tuesday, because I have to
14 be out of here at 4:00. Why don't we just take the
15 time now, gentlemen, to at least have Mr. Bailey
16 start or would you prefer just starting fresh -- or
17 I'm sorry, Mr. Becker.

18 MR. JUHASZ: I have no objection if
19 Mr. Becker wants to start.

20 MR. INGRAM: I was going to make a
21 suggestion. As I understand, what we have just
22 been told, you are taking care of your 93 year old

1 mother-in-law. And it is not a problem, if you can
2 find somebody to carry on for you while you are
3 away?

4 MS. BIEL: What I do for her is I
5 get her pills for her ready for like two weeks, and
6 I do her shopping and I do her washing and all of
7 that kind of stuff. It is not something that I
8 couldn't work around. If I was going to be
9 sequestered, then it might be a problem.

10 MR. INGRAM: What I was going to
11 suggest is between now and Tuesday, do you want to
12 see if you can get somebody to sort of carry the
13 slack for you? If you can't, let us know Tuesday
14 and if you can, then we'll begin. Does that make
15 sense?

16 MS. BIEL: Yes, I didn't want to go
17 ahead and do anything until I came here and found
18 out what was going on.

19 MR. BECKER: I do want to suggest to
20 you that there may be a point in this proceeding
21 where you may be sequestered.

22 MS. BIEL: It was mentioned before.

1 MR. BECKER: That would be the
2 problem. It wouldn't be so much coming to Court
3 and going home and doing the things you normally do
4 for her. It would be if you are sequestered for a
5 couple of days or maybe three days?

6 MS. BIEL: Well, if it was like
7 three days or so, that is not really a big problem,
8 but if it was a couple of weeks at a time.

9 MR. BECKER: It could be twice
10 during these proceedings that you could be
11 sequestered, maybe a couple of days each time.
12 That is okay with you? That is what you are
13 referring to when you say you could get someone
14 else to help out?

15 MS. BIEL: Right, or I can like get
16 it done ahead of time. I could work around it.

17 MR. BECKER: It is not going to be
18 such a distraction that you couldn't give your
19 attention to this case, is it?

20 MS. BIEL: No. It is my
21 mother-in-law.

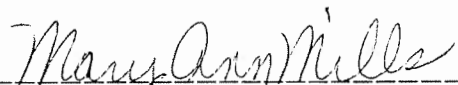
22 THE COURT: We'll see you next

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1 Tuesday. I again remind you not to discuss
2 anything or read anything or watch anything on T.V.
3 (Juror No. 85 excused from the Courtroom.)
4 (Court in Recess at 3:10 p.m.)
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REPORTER'S CERTIFICATE

I do hereby certify that the above and foregoing is a true and correct transcript of the proceedings had in the within hearing as shown by stenotype notes written by me in the presence of the witnesses at the time of the hearing.



MARY ANN MILLS, R.P.R.
Official Court Reporter
Trumbull County, Ohio

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,) Case No. 2001-CR-0793
Plaintiff)
-vs-) Judge John M. Stuard
DONNA M. ROBERTS,) VOLUME VIII
Defendant) VOIR DIRE PROCEEDINGS

Capital Murder trial held on Tuesday, April 22, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull Co. Court of Common Pleas
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the Plaintiff:

Messrs. Kenneth N. Bailey and Christopher Becker,
Attorneys at Law

On behalf of the Defendant:

Messrs. J. Gerald Ingram and John B. Juhasz,
Attorneys at Law

Official Court Reporter: Richelle J. Guerrieri

ORIGINAL

I-N-D-E-X

VOLUME VIII

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* * *

1 (For prior proceedings, please see the
2 transcript of Mary Ann Mills, Volume VII.)

3 TUESDAY, APRIL 22, 2003

4 WHEREUPON,

5 SHIRLEY A. BIEL

6 being first duly sworn, according to law, was examined and
7 testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q How are you? Ma'am, you read the handout that was
11 given to you?

12 A Right.

13 Q You know then that we're here on an aggravated
14 murder case, two counts of aggravated murder with
15 specifications.

16 Under Ohio law a person who does murder is not
17 necessarily eligible for the death penalty, it's only under
18 certain circumstances. Two of those special circumstances
19 are included in this indictment. So that makes, raises the
20 possibility that the death penalty might be something that
21 this jury has to consider.

22 The State has to prove each and every element beyond
23 a reasonable doubt of these crimes before the State would be

1 entitled to a finding of guilty. If the State fails to do
2 that, then this jury would make a finding of not guilty and
3 that would be the end of the matter.

4 But if the State proves its case then it will go
5 into a second phase. And during that second phase the
6 prosecutor is again called upon to present evidence about
7 what we call aggravating circumstances. Those are reasons
8 why the jury should consider and impose the death penalty.
9 The defense at that second hearing has an opportunity to
10 present mitigating factors. Those are reasons why the jury
11 should consider not imposing the death penalty.

12 But again, at that second phase the burden is
13 entirely on the State to prove those factors before the jury
14 could proceed with considering of the death penalty. And
15 along with the death penalty, in any event, the jury is
16 called upon to consider three possible life imprisonment
17 findings: life without parole; life in prison without the
18 chance of parole before 25 or 30 years. So that brings us to
19 the reason why you're here today.

20 In order for this jury to be, return a fair verdict
21 it has to be fair to both sides, and that requires a person
22 who is able to follow the law. Some people hold that the
23 death penalty should be imposed whenever a person is guilty,

1 found guilty of aggravated murder. Other people feel they
2 could never participate in such a decision, that they could
3 never decide on such an important thing as whether someone is
4 going to be put to death or live.

5 A person that, both of the extreme positions could
6 not serve as a juror because they couldn't be fair to both
7 sides. If you're never going to be able to impose a death
8 penalty, then the State hasn't had a fair trial. And if you
9 believe that just because you kill somebody you should
10 forfeit your life, then you can't be fair to the Defendant.
11 Because the State has to prove all those elements and has to
12 prove that the aggravating circumstances outweigh those
13 mitigating factors.

14 So that will be the primary thing that you'll be
15 questioned about, is what your views are. Whatever your
16 views are, are fine. You're entitled to your own opinion.
17 Everyone here will respect your personal opinion. It's just
18 that they have to have an opportunity to find out what your
19 opinion is.

20 The second issue will be about pretrial publicity.
21 Have you read or heard something about this case that would
22 make it impossible to set that aside? Because this case has
23 to be decided on the evidence presented in this courtroom.

1 If it isn't, again, someone will not receive a fair trial.
2 So they'll ask you about what you know, if anything, about
3 the facts of this case and about your views on the death
4 penalty. Okay?

5 A Uh-huh.

6 THE COURT: Fair enough.

7 EXAMINATION

8 BY MR. BAILEY:

9 Q Good morning, Mrs. Biel. Am I pronouncing it right?

10 A Yes.

11 Q My name, as you're aware, is Ken Bailey. I'm an
12 assistant prosecutor with the Trumbull County Prosecutor's
13 Office. And as I promised the other week I'm going to be,
14 I'm joined by my co-counsel, Chris Becker, from our office.
15 And the two of us are responsible for prosecuting this
16 particular case.

17 Now, as the Judge said, we're going to be asking you
18 some questions regarding your viewpoint on different issues
19 and your knowledge about certain things. And the reason we
20 do this is to make sure that the folks who are selected to
21 serve on this jury can be fair and impartial to both sides,
22 both to the Defendant and to the people of the State, not
23 because we're snoopy and we like to pry and ask a lot of

1 questions of folks.

2 I want to point out a couple of things here at this
3 time. There aren't any right answers or wrong answers to
4 these questions, only open and candid answers. And if we run
5 into each other out in the hallway maybe or in the elevator
6 or in a restaurant or something during the course of the
7 trial, which could include up to two phases here, we're not
8 allowed to have any communication with you outside the
9 courtroom here. Okay? It would be improper for us to do
10 that. So if we run into each other and you say good morning,
11 all we're allowed to say maybe is good morning.

12 If you have any questions you have to address it to
13 the bailiff who will be here later, Laurie Brown, or to
14 Richelle, our court reporter, or to the Judge. But we're not
15 being antisocial or trying to snub you in any way. I just
16 want you to be aware of that. Both sides, we have to follow
17 these rules of conduct. Because if we talk to you it could
18 result in a mistrial and we don't want to have to do it all
19 over again.

20 You can't go out to the scene to investigate on your
21 own. We had a juror do that. Sometimes folks do it in the
22 movies, TV. And sometimes people get the impression that
23 they can do that. That would be improper. That would also

1 result in a mistrial. We certainly don't want to have that
2 happen.

3 Now let me ask you -- oh. If you have any questions
4 that come up during the proceedings about what we're doing,
5 this is sort of a give and take, and this is an opportunity
6 for you to ask these questions, too. You can get an answer
7 to any of those. Feel free as long as it pertains to what
8 we're doing here.

9 Now the first thing I want to ask you about is this
10 issue of pretrial publicity. You indicated in your
11 questionnaire that you were familiar with the name of
12 Fingerhut.

13 A Right.

14 Q I looked at your questionnaire and it indicated that
15 you read the Vindicator and you listen to Fox News. Okay.
16 You weren't familiar with the Defendant's name, Donna
17 Roberts, or the co-defendant's name?

18 A Right.

19 Q But you did, the name Fingerhut rang a bell. How
20 so? I mean, you've had time to think about this over the
21 last week.

22 A I heard it in the news before and, in fact, what I
23 was referring to there was, I had just heard, the weekend

1 before I came in I had just heard that it was going to trial
2 that week, the week that I was called. I was called
3 April 8th. And I didn't really hear the name Roberts or
4 anything. I heard Fingerhut. And then in retrospect
5 thinking back on it then it was like, oh, you know, I kind of
6 figured.

7 Q What do you recollect about the name Fingerhut and
8 what it was associated with?

9 A He was murdered. But I don't, I didn't really know.
10 I didn't follow it so I don't really know that much about it.

11 Q Okay. It may well be that during the course of the
12 trial you may hear something, some testimony that might
13 strike another bell and bring back a memory of something you
14 read or saw, but it's very important you get all your
15 information about this case from what happens here in this
16 courtroom, from the testimony of the witnesses, the physical
17 exhibits that might be introduced and the instructions of law
18 given to you by Judge Stuard.

19 It wouldn't be fair to take something that you heard
20 from, maybe you read in the newspaper or heard on TV.
21 Because as you look around the courtroom today there's nobody
22 here from the news media. It may well be that during the
23 course of the trial we'll see the TV cameras set up. And

1 they can't photograph the jurors. They're not allowed to.
2 But they may set up for a few minutes, five or ten minutes
3 and film something, where maybe ten seconds is on TV, okay,
4 at most, or three seconds, and they may do a feature on the
5 trial based on the time that they were here. Or the
6 newspaper reporters may sit in for a little bit, but they're
7 going to miss everything that was asked and answered before
8 they got in here and everything that happens after they leave
9 here. So their story, not intentionally, but because of the
10 nature of their business, they have to rush in to print,
11 they're on the air, it's going to be slanted. And it could
12 be distorted.

13 So it may well be that if you sit on this jury you
14 may have somebody save the newspapers for you and when it's
15 all over you look at them and say, you know, gosh, I sat in
16 Judge Stuard's courtroom for the entire trial. I heard the
17 testimony of the witnesses, and what I read in these papers
18 bears no relation to that. It's like they were listening to
19 a case in Judge McKay's court. And say that information
20 wasn't very accurate.

21 So you understand that's why the Judge admonishes
22 you not to read the papers or listen to the news on TV or
23 radio. If that happens, you walk out of the room or shut it

1 off or put it aside; right?

2 A Right.

3 Q And you wouldn't have any problems starting with a
4 blank slate in this courtroom?

5 A I don't think so.

6 Q Because you don't really remember anything?

7 A No, I really didn't pay that much attention to it.
8 I heard it. I heard it. But a lot of times the radio is on
9 and I'm not really listening to it, I just, it's on, you
10 know. I mostly listen to the radio. But TV is the same way,
11 I can be easily distracted.

12 Q With all the murders that are in the news, it's hard
13 to keep track of one from the other; right? They sort of
14 sometimes blend together?

15 A Right.

16 Q Now, the second thing I wanted to get into was this
17 issue of the death penalty as a possible punishment. Now,
18 you read that handout that we have downstairs?

19 A Yes.

20 Q You heard what the Judge told you. The Defendant
21 here is charged with four different crimes. Okay. There are
22 two counts of aggravated murder. There's one person who was
23 killed but there are two separate theories the State is

1 allowed to pursue. And we've elected to use both theories.
2 Okay. And we're allowed to do that. It's proper. And we're
3 doing that.

4 And there's one type of aggravated murder charge
5 with prior calculation and design, the purposeful killing of
6 another with prior calculation and design. And there's a
7 second type of aggravated murder, and we call that felony
8 murder. It's a purposeful killing of another during the
9 course of a special felony, like an aggravated burglary or an
10 aggravated robbery. Okay? So those are the two counts of
11 aggravated murder. And attached to each of these two counts
12 of aggravated murder are these specifications or special
13 findings of aggravating circumstances.

14 It's a lot of fancy words that basically mean that,
15 the first one is an aggravating circumstance of an aggravated
16 burglary. And this term aggravating, or specification, is
17 just a fancy word for a special extra finding of fact for a
18 jury to consider. Similar facts you got to look at. And
19 there are two of those. The first is that the aggravated
20 murder was committed during an aggravated burglary and that
21 the Defendant committed the aggravated murder with prior
22 calculation and design. This term prior calculation and
23 design, sort of like the old type of premeditated murder that

1 you probably heard about, but they changed the law a bit so
2 it requires some planning in advance.

3 The second specification or special finding of fact
4 charges an aggravated murder that was committed during the
5 course of an aggravated robbery as opposed to an aggravated
6 burglary, and that the Defendant committed the aggravated
7 murder with prior calculation and design. So these special
8 findings of fact, those are special findings that would make
9 a defendant eligible for the death penalty as a possible
10 punishment.

11 So if the jury returns a guilty verdict on a charge
12 of aggravated murder and one or more of the specifications we
13 would go into a second phase. Okay. That's unusual. It
14 doesn't often happen in Ohio, because in a usual jury trial
15 the jury never considers the issue of punishment. That's up
16 to the judge alone. But only in this type of a case we go to
17 a second phase where the jury considers that issue of
18 possible punishment.

19 Now, there are two more charges here the Defendant
20 is charged with. There's a crime called aggravated burglary,
21 and attached to that is a firearm specification or a special
22 finding, a charge here that a working gun was used. And then
23 there's a fourth count of aggravated robbery also with that

1 special finding of a working gun, a firearm specification.
2 So there are four separate counts, okay, with these special
3 findings attached.

4 The Defendant also is charged as a complicitor. A
5 complicitor is someone who solicits or procures another
6 person to commit a crime or aids and abets another person in
7 committing a crime. The Defendant is charged here with being
8 a complicitor, with not being the trigger person so to speak.
9 Not the person who actually went into the house. Not the
10 person who actually committed an aggravated robbery or stole
11 a car, but being a complicitor with another person by the
12 name of Nate Jackson. Okay? The charge is that Nate Jackson
13 actually did these things.

14 Do you understand, do you have any problem with her
15 being charged as a complicitor, not with being the trigger
16 person but rather somebody who --

17 A No, I understand that.

18 Q Okay. Now, each of these crimes is composed of
19 certain elements, key ingredients in a recipe so to speak.
20 It's like baking a cake. I take it over the years you've had
21 occasion to bake a cake?

22 A Oh, yeah.

23 Q Any favorite cake that your children might have had?

1 A No. They just like sweets. It doesn't matter.

2 Q Is chocolate cake okay?

3 A Yes, that's fine.

4 Q Let's take a chocolate cake. You've got your key
5 ingredients in your chocolate cake. And if you put all those
6 ingredients together and put them in the oven, mix them
7 together, 350 degrees, you know, for a certain amount of
8 time, 40 minutes or something, whatever the recipe calls for,
9 the cake will rise. If you leave one of those ingredients
10 out, like the chocolate, you may get a cake but it won't be
11 that chocolate cake; right?

12 Same thing with a crime. We have certain key,
13 essential elements, key essential component parts to these
14 crimes, and these are called elements. Let me give you a
15 for instance because the Judge is going to define these terms
16 for you at the conclusion of this case, and he'll go into it
17 in great detail. And you're bound to follow his
18 instructions. But let's take this crime of aggravated
19 murder. Let's take the aggravated murder with prior
20 calculation and design.

21 Let's say one of these elements would be that it
22 happened on or about a certain date. Let's say December
23 11th, 2001. We have to prove that. So there will be

1 testimony. Somebody has to come in and testify to that.

2 The second element would be called what we call
3 venue, that it happened here in Trumbull County, Ohio. It
4 happened in Howland, but in this county, so that we can try
5 this case in this courthouse rather than up in Ashtabula or
6 down in Tuscarawas or somewhere.

7 The third element is identification, that the person
8 who committed this crime as a complicitor is the Defendant.
9 And somebody would come in and point her out somewhere in the
10 trial.

11 The fourth element is that she acted purposely,
12 basically on purpose. But the Judge will define that.

13 The fifth is that she caused the death of a living
14 person, a fellow by the name of Robert Fingerhut.

15 And the sixth, that she acted with prior calculation
16 and design.

17 Now, can you hold us to proving those elements that
18 the Judge will instruct you we have to prove? You won't
19 force us to prove anything more than what the Judge says we
20 have to prove?

21 A The only thing I'm confused on is when you talked
22 about robbery and burglary with a working gun, I mean, I
23 don't understand how you would kill somebody without a

1 working gun.

2 Q You can use a knife or you can use a baseball bat.

3 A Right. But if you're going to use a gun --

4 Q But in the state of Ohio the state Legislature
5 passes the laws and they define the elements of the crimes.
6 And they also add these special findings that can be attached
7 to certain crimes. And one of these special findings or
8 specifications that can be attached is if you use a working
9 gun or a firearm to commit a crime, then it's an extra type
10 of offense.

11 A Okay.

12 Q Okay. I mean, there are different types of working
13 guns. There could be fully automatic weapons, or if you have
14 a silencer or a muffler on the gun. But there's, there are
15 different types of specifications regarding firearms.

16 A Okay. Legal mumbo-jumbo.

17 Q Right.

18 A Okay.

19 Q But that would be something you would have to
20 consider. We have to prove that, too. It's sort of like
21 elements to that specification of a working firearm. We got
22 to prove that it would be, the Judge will define the term
23 firearm for you, and it would be capable of expelling a

1 projectile by means of combustion or explosion. It's a
2 working gun. The bullet comes out and you pull the trigger,
3 boom. Okay. Good question.

4 The term aggravated burglary and aggravated robbery,
5 there's a distinction there. Sometimes the newspapers or
6 just people on the street get those terms confused. And in
7 law they have very specific meaning. Basically when we talk
8 about aggravated burglary it means going into an occupied
9 structure, like a dwelling, house, okay, where you trespass
10 in that structure in one of several ways. And you go in with
11 the purpose to commit some type of offense inside. Maybe an
12 aggravated murder or a theft offense or something like that.
13 And you, the perpetrator can be armed with a deadly weapon,
14 like a working gun, or he could cause serious physical harm
15 to somebody inside that residence. Okay.

16 The term aggravated robbery generally refers to the
17 taking of property of another through the use of force or
18 threat of force. And again, the perpetrator can be armed
19 with a weapon of some kind, and the perpetrator can cause
20 serious physical harm to the victim.

21 A But isn't it the same thing?

22 Q Well, burglary deals with breaking into a house or
23 trespassing in a house or a structure of some kind, dwelling,

1 house. And robbery, there doesn't have to be a house. You
2 could do it on the street.

3 A Okay.

4 Q You can do it in a car. It can happen on a boat or,
5 or just out in the park.

6 A Okay.

7 Q No structure is needed. So there are different
8 elements, like the recipe. Now, it may well be that you have
9 a special interest in footwear, let's say. My wife likes
10 shoes. She's got like a trillion pairs of shoes. And let's
11 say you had a special interest in shoes. You were wondering,
12 what was somebody wearing during this offense? And because
13 we're lawyers, you're sort of stuck with our questions.
14 We're geared toward proving elements, and we might never
15 think of something about shoes if they don't relate to
16 proving the elements. And that may be the type of question
17 that may never get answered during the course of the trial.
18 It may never arise. But you might have that special interest
19 wondering about it. And if we never prove something like
20 that and never get into it, but you feel that we've proved
21 these elements of the crime by proof beyond a reasonable
22 doubt so you're firmly convinced of the truth of the charge,
23 you would be able to return a conviction, wouldn't you?

1 A Yeah.

2 Q Okay. Now, you understand that under our system of
3 justice this Defendant, as are all other defendants tried in
4 this courtroom, she's presumed innocent. She's cloaked by
5 this presumption of innocence, and that presumption of
6 innocence stays with her all through the course of this
7 trial. She doesn't have to prove anything. The burden of
8 proving the elements is entirely on us. She and her defense
9 attorneys can just sit there and not do anything during the
10 course of the trial. They're allowed to do that. That, I
11 doubt, will happen. I'm sure they're going to ask a lot of
12 questions.

13 But you understand she's cloaked with this
14 presumption of innocence, and that presumption stays with her
15 all through the course of this trial. We're at ground zero
16 right now. There's no evidence presented. And it's only
17 after you've heard all the evidence and the trial is over,
18 you go back with the other jurors into the jury room to
19 deliberate that at that point if you find that we proved the
20 elements of the crime beyond a reasonable doubt at that point
21 that presumption of innocence will be gone. I mentioned the
22 burden of proof. Proof of the elements is on us. The
23 Defendant has no burden of proof.

1 Now, there are different types of evidence that we
2 can use to prove these elements. There's direct evidence
3 where a witness can come in and testify what he or she has
4 learned during the use of their five senses like I, I heard
5 the gunshot and it was loud. I smelled the smoke and it was
6 acrid. I touched the body and it was cold.

7 There's another type of proof that you're used to
8 dealing with. And when you used to drive a school bus you
9 would be presented with certain facts, like get a weather
10 report. And you drive down the road and you might see, you
11 know, it's really cold out or it rained just before that.
12 You may be very careful because you're aware, based on your
13 experience, it could be icy out there somewhere. You may not
14 see the ice, but you just have that feeling based on all the
15 other things. The rain that's fallen before, okay, and the
16 fact that it's freezing outside, that the road and prior
17 driving experience tells you that that roadway may freeze.
18 And there may be signs out there saying "Bridge Freezes
19 Before Roadway," so you would be very careful going over that
20 bridge.

21 The second type of evidence we call circumstantial
22 evidence. Sometimes people hear that term and they think,
23 well, that's terrible. But they don't really know what

1 circumstantial evidence is. Basically you're presented with
2 a fact or series of facts, and then you're asked to draw a
3 logical conclusion to another fact or series of facts. And
4 it's just as good as direct evidence.

5 Let me give you an example of that, other than
6 driving a school bus. Let's say you go to bed at night. You
7 live in a neighborhood, you live in a two-story house and you
8 look out your window before you go to sleep on the second
9 floor and it's a beautiful night. The moon is beaming. The
10 stars are twinkling. There's not a cloud in the sky. It's
11 dry as far as you can see across the neighborhood. So you
12 close the blinds and you get into bed. And just before you
13 fall off to sleep you hear a weather report on the radio, the
14 announcer says there's a cold front moving in. We expect a
15 storm later tonight. And you fall asleep.

16 And some time during the night you're awakened by a
17 distant booming sound. And you look toward the window and
18 there's this bright flash of light coming from outside, but
19 you can't see what's happening outside because the blinds are
20 drawn. And a few seconds after that flash there's a distant
21 boom, and a minute goes by and then there's another bright
22 flash outside, and closer in time boom. And suddenly there's
23 a big flash of light outside and a big ripping booming sound

1 above the house and a pitter-patter on the roof. A steady
2 drumming. And you fall back asleep.

3 And some time later you wake up, open the blinds and
4 you look out. A beautiful day. The sun is shining. Not a
5 cloud in the sky. But as far as you can see the rooftops are
6 all wet, streets are running with water. Drops of water are
7 dripping off the leaves of the tree. There's no fireplug
8 out there for somebody to hit it. You know what happened
9 during the night, don't you?

10 A Right.

11 Q What happened?

12 A It rained.

13 Q A thunderstorm; right?

14 A Yeah.

15 Q And you know that beyond any reasonable doubt, don't
16 you?

17 A Right.

18 Q The same thing is true with proving a crime. We can
19 put on circumstantial evidence, because that's what that is.
20 There's room in there for some possible or imaginary doubt.
21 You can imagine that Alf and his martian buddies flew by in
22 flying saucers overnight and put on a sound and light show
23 and sprinkled the ground with some wet stuff. But that would

1 be a foolish or imaginary doubt, wouldn't it?

2 A Yes.

3 Q And your reason and common sense tells you that all
4 that happened was that there was a thunderstorm?

5 A Right.

6 Q The Judge is going to define this term, proof beyond
7 a reasonable doubt for you at the end of this case. But
8 basically it's where you're convinced using the use of your
9 reason and your common sense that you use raising a family,
10 driving a school bus, dealing with other people during the
11 course of your life where you're firmly convinced of the
12 truth of the charge to a moral certainty. Okay? And that's
13 something you are used to doing in your every day life, isn't
14 it?

15 A (Witness nods head affirmatively.)

16 Q You understand it's not 100 percent proof. It's not
17 proof beyond all doubt or beyond a shadow of a doubt.

18 Sometimes you hear that term, shadow of a doubt. It's an
19 Alfred Hitchcock movie type. But there's no such animal in
20 criminal law in Ohio or elsewhere in this country. Okay.

21 It's sort of like having a box, and we've got to
22 fill that box with enough evidence to convince you that what
23 these charges are are true. Okay. And that box doesn't have

1 to go completely to the top. That would be 100 percent
2 proof. And that's not our burden. Okay.

3 And it's up to you and each individual juror to
4 determine how high you want to draw that line on the box that
5 we have to fill. But it's going to be more than halfway,
6 right? In a civil case it would be just over halfway. But
7 in a criminal case it's proof beyond a reasonable doubt so
8 that we've got to get that box pretty full, convince you as
9 to the truth of these elements; right?

10 A Right.

11 Q Now, under our system the Legislature passes the
12 law. And I think you would agree we're a nation of laws.
13 It's not whatever each person decides. We have to follow
14 these laws for our system to work.

15 We may have our personal views about what the law
16 should be, but we have to obey what the Judge tells us the
17 law is; right? Now, you have your own views on the death
18 penalty as a punishment. And you've noted on your
19 questionnaire that you think cases involving the willful rape
20 of children and kidnapping, the perpetrator should get the
21 death penalty?

22 A I do.

23 Q You also feel kidnapping or cases of deliberate

1 murder of another, that should be a death penalty offense?

2 A Yes.

3 Q Right. And for child murder and killing for money
4 or monetary gain; right?

5 A Yes. But --

6 Q But there are mitigating circumstances; right?

7 A Yes.

8 Q You had mentioned some in your questionnaire that if
9 it was a parent taking his own child, something happened. Or
10 if it was an accident, accidental killing, like you said an
11 accidental manslaughter. Are you talking about a traffic
12 crash or --

13 A Yes.

14 Q Now, you understand --

15 A Something that wasn't done purposely.

16 Q Okay. And that's fine. That's fine that folks have
17 their own views because that's what makes up our society,
18 different viewpoints. But are you able to set aside your own
19 feelings of what should be the law and follow what Judge
20 Stuard tells you?

21 A Do you want me to answer that now?

22 Q Sure.

23 A I have these -- when I wrote that, that was this

1 first day I was in here, and I have those views on the death
2 penalty. But to be very truthful with you, I could not
3 sentence that woman to die. I couldn't. I pray for her
4 every night. I don't know her, but it has affected me and I
5 just, there's no way I can sentence her to death. I don't
6 want that on my conscious.

7 Q Are you saying --

8 A I'm for the death penalty. But I'm thinking like, I
9 don't know that I could do it. I mean, the more I think
10 about it the more I don't think I can do it.

11 Q Well, it's important that you tell us now because
12 it's important that both sides get a fair trial.

13 A Exactly.

14 Q And the Defendant has a right to a fair trial.
15 Somebody who would come in and would automatically impose the
16 death penalty as a punishment or recommend the death penalty
17 as a punishment, no matter what mitigating circumstances,
18 mitigating factors are presented, things that would work
19 against the death penalty, wouldn't be fair to her; right?

20 And for the State it's fair, it's important that the
21 State gets a fair shake, too. That if somebody who could
22 never impose or never come back with a verdict for the death
23 penalty, that we're aware of that too. And it's obvious

1 you've given a lot of thought to this.

2 A I think about it constantly.

3 Q It's important --

4 A But it's, it's like ruling my life. I just couldn't
5 do that. I just couldn't. I don't want it on my conscious
6 that I sentenced somebody else to die. Then I'm not any
7 better than somebody that took somebody else's life.

8 Q Is that based on a personal, moral, ethical or
9 religious belief?

10 A I don't know where it came from, I really don't.
11 It's just been bothering me.

12 Q Let's talk about it. If I understand, you're saying
13 logically you're in favor of the death penalty. You think
14 society should have that as a punishment?

15 A I do. And I think there are certain cases where I
16 could give the death penalty.

17 Q Certain cases?

18 A Yeah. Like if somebody, if somebody maimed a child
19 or like this Laci case, something like -- I mean that is so
20 extreme. I, I just --

21 Q Now, you indicated in your questionnaire that you
22 thought that a murder for monetary gain would be --

23 A And I thought that when I filled it out, I thought

1 that. I don't know if this -- this obviously must have
2 something to do with that but --

3 Q Well, the charge here is, it's a killing of another
4 person, of the Defendant's ex-husband for insurance money and
5 for the stealing of a car.

6 A But could I sentence her to die for that? I don't
7 know.

8 Q Okay. Well, it's important that you search your --
9 let's say we get to the point where -- the Judge is going to
10 explain to you, this case is going to be tried in two
11 different phases. The first phase deals with the issue of
12 guilt or not guilt on these elements; right? Okay. And
13 let's say we convinced you and the other jurors by proof
14 beyond a reasonable doubt that she's guilty as charged of the
15 aggravated murder or murders, counts with the specifications.
16 There are two specifications, and we convince you that she's
17 guilty of aggravated murder with one or more of these
18 specifications, these special findings. Your feeling about,
19 you're telling me, if I understand, you really don't think
20 you could be part of imposing a death penalty verdict?

21 A I don't think I could.

22 Q Now, is your opposition, your own personal feeling
23 about that such that you think it would affect your ability

1 to return a guilty verdict in the first phase if we convinced
2 you beyond a reasonable doubt that she was guilty knowing
3 that if you found her guilty of aggravated murder with one or
4 more specifications that she would be eligible for the death
5 penalty in the second phase?

6 A I don't know. As you can see on my form, I was a
7 prior juror in another case and we did find him guilty.

8 Q What kind of case was that?

9 A It was a rape, kidnapping and robbery. But
10 afterward it effected me so bad I nearly had a nervous
11 breakdown because I felt, I felt he was truly guilty of rape.
12 I truly felt he was. But then they put on kidnapping
13 because he carried her from one room to another.

14 Q That's under the law.

15 A And according to the way we were charged we needed
16 to find him guilty. Also, they got him for stealing \$2 out
17 of her purse.

18 Q Which would be the robbery?

19 A Which would be the robbery. And the way we were
20 charged it was like, okay, these were crimes by law, and we
21 found him guilty on all the charges. And I have felt so bad
22 ever since because I think they just loaded down charges on
23 that man. I mean, I know he was guilty of rape, but there

1 were extenuating circumstances. His wife had just left him.
2 It was his birthday. This woman had invited him into her
3 house. They were drinking. I mean, as time passes on it's
4 something I carry as a burden because I think we overcharged
5 him. And I talked to the judge and the judge said he's been
6 in the system before and, you know, and he, he committed this
7 and everything. And I talked to his lawyer.

8 Q Who was the judge?

9 A I don't know. Some judge down in Columbus. And now
10 I don't know if they're going to like slap a bunch of, if
11 you're going to slap a bunch of charges on her that, okay, I
12 don't know what caused her to do this. I don't know what
13 extenuating circumstances there were. The man did not
14 deserve to die. Nobody deserves to die because somebody else
15 wants them dead. But I don't want to carry this burden
16 through my life.

17 Q Fair enough. You're saying your prior jury service
18 has effected you to such an extent that it's still with you
19 and you think about it all the time?

20 A Because I wonder what happened to him.

21 Q Now, this case is even more serious than the last
22 one.

23 A Yeah, right.

1 Q And if I understand, are you telling me that because
2 of second thoughts you might have had about your first jury
3 case, that this would affect you or have some substantial
4 impact on you in determining guilt in this case if you
5 were --

6 A I don't know that. I don't know that. I don't know
7 that. I just, I think I should be excused. I don't think I,
8 I don't think I can handle it.

9 Q Okay. That's fair enough. And are you telling me
10 then in the second -- let's say we got to the second phase
11 and the issue was punishment. If you -- and we convince you
12 that the death penalty was the right punishment under the
13 circumstances, you wouldn't be able to sign that verdict
14 form?

15 A I don't think I would.

16 MR. BAILEY: Okay. Thank you very much.

17 MR. INGRAM: We have no objection to the
18 juror's request to be excused.

19 MR. BAILEY: Nor do we, Your Honor.

20 THE COURT: Ma'am, we thank you. Sorry to
21 put you through this.

22 A That's okay. I just don't feel that I could.

23 THE COURT: Well, that's what we have to

1 find out.

2 A Okay. I'm sorry I get so emotional. It's
3 somebody's life in the balance and I just, I pray for her
4 every night.

5 MR. INGRAM: Wait. I have a couple
6 questions, if I may.

7 EXAMINATION

8 BY MR. INGRAM:

9 Q When you were called a couple Tuesdays ago to the
10 other end of the hallway.

11 A Yes.

12 Q Did you see or hear anything a little untoward in
13 that room or a little out of the ordinary?

14 A That was -- beg your pardon?

15 Q Did you happen to hear or see anyone talking about
16 the case?

17 A No.

18 Q That's all I wanted to know.

19 THE COURT: Okay. Ma'am, thank you for
20 your time. You have a nice day.

21 A I wish you the best of luck.

22 MR. INGRAM: If I may humbly suggest to
23 Mr. Bailey that if he would move his death penalty voir dire

1 to the beginning where it's supposed to be, we could save
2 some time in these matters.

3 THE COURT: I can only point out to you,
4 Mr. Ingram, that Mr. Bauer has been trying for years to get
5 Mr. Bailey to change his M.O. with no success.

6 * * *

7 WHEREUPON,

8 MICHAEL HILDACK

9 being first duly sworn, according to law, was examined and
10 testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q Good morning, Mr. Hildack. You read that handout
14 that was given to you?

15 A Yes, sir.

16 Q That, hopefully, explains it pretty well. But I
17 have to go through a few more things here. The purpose for
18 this morning is to find out your thoughts on two main issues.
19 As you're aware, Miss Roberts is charged with two counts of
20 aggravated murder with specifications.

21 Under Ohio law a person who is found guilty of
22 murder does not necessarily, or does not automatically get
23 the death penalty. It's only under certain circumstances.

1 The Legislature determines what those reasons are. If you
2 murder the Governor, then that could qualify you for the
3 death penalty.

4 There are specifications attached to these
5 indictments which also raises that possibility. So that
6 requires this jury to sit and listen to the evidence on the
7 aggravated murders and determine whether or not the State has
8 proven beyond a reasonable doubt each and every necessary
9 element to substantiate that. If the State fails to do that,
10 to carry the burden, then the verdict would properly be not
11 guilty. That would be the end of the trial.

12 If the prosecution proves its case then the trial
13 would go into a second phase, and at that time the jury would
14 be called upon to listen to the aggravating circumstances
15 introduced by the prosecution. Those are reasons why the
16 jury should consider and impose the death penalty.

17 Now the defense has an opportunity at that time to
18 present mitigating factors, which are reasons why the jury
19 should not in this particular case impose the death penalty
20 even though it's possible. But the burden is on the State to
21 prove beyond a reasonable doubt that those aggravating
22 circumstances outweigh the mitigating factors. I'm sure
23 you'll get sick of hearing these terms, but we have to go

1 through the thing the way that the statute reads.

2 There are people who believe that a person who takes
3 another human being's life should forfeit their own life.
4 That is not the law of Ohio. There are, on the other side of
5 the question, people who under no circumstances feel that
6 they could make such a decision no matter what the law is.
7 Well, if you have people from both extremes somebody can't
8 get a fair trial. So the ideal juror on this case is someone
9 who is going to have their own personal view of the death
10 penalty. Some more for it, some against it. We have to have
11 12 people who are able to say to themselves and to give these
12 folks assurance that they will be able to follow the law no
13 matter where that law leads once the facts are established.
14 That's the main area of inquiry which will be put to you.

15 The other issue concerns pretrial publicity. It
16 isn't and cannot be fair for either side to have any jurors
17 who already have their mind made up because of something they
18 think they know about the case. This case has to be tried in
19 this courtroom on the facts and determined on the facts of
20 the law. So that takes people who, even though they may have
21 read something in the newspaper, whatever, are willing and
22 able to set that aside out of their mind and decide the case
23 fairly on the facts presented here. So that's what you will

1 be asked about.

2 No right or wrong answers. Whatever your opinion
3 is, that's fine. We will all respect that. It's just they
4 have to know what your true thoughts are on the issues. Fair
5 enough. Mr. Becker.

6 MR. BECKER: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. BECKER:

9 Q Good morning. Is it Mr. Hildack?

10 A Yes.

11 Q My name is Chris Becker. I work for the county
12 prosecutor's office. And this is Mr. Ken Bailey. He's an
13 assistant there as well. And we are both trying this case
14 together. And of course the defense attorneys in this case
15 are Mr. Juhasz and Mr. Ingram, and they represent Miss
16 Roberts.

17 This is really the only chance that we get to speak
18 to you like this where we can ask questions, and you can ask
19 questions of us, if you have questions about this procedure,
20 because I don't believe you served on jury service
21 previously, have you?

22 A Yes, I have.

23 Q Oh, you have. And you probably went through it a

1 little bit differently with a group of individuals seated
2 here, and then maybe they were all together.

3 I want to start out, first of all, by the two areas
4 that the Court indicated. And the first is the publicity
5 aspect. I assume you've heard some of this case?

6 A Yes.

7 Q Have you formed an opinion about the guilt or
8 innocence of this Defendant based upon anything you've read
9 or seen or heard on the television?

10 A No.

11 Q So you come into this courtroom not thinking she's
12 guilty or innocent based on what you read?

13 A Correct.

14 Q You just merely read the articles for the
15 information that they contained and maybe didn't even follow
16 them that closely?

17 A Right.

18 Q So you have heard of the case?

19 A Yes.

20 Q Mr. Fingerhut, Miss Roberts. I'm assuming you also
21 heard of Nate Jackson?

22 A Yes.

23 Q All right. You don't believe that any of that

1 publicity would affect you in terms of being a juror in this
2 particular case?

3 A I don't think so, no.

4 Q So as you sit here today you don't look at Miss
5 Roberts and say, well, I read this about the case and I think
6 she's guilty or not guilty. I think it was the other guy.
7 Or I think it was both of them in the plan. You don't have
8 any preconceived notions as to her guilt or innocence?

9 A No.

10 Q Now there may come a point in this case where
11 testimony is presented that may coincide or may bump up
12 against something you read or saw on television.

13 A Uh-huh.

14 Q Are you going to be able to put aside what you've
15 seen on television or heard on the radio or read in the
16 newspaper in making your determination?

17 A I don't see any reason why not.

18 Q You wouldn't say, for instance, if a piece of
19 evidence came to light during the trial or the testimony was
20 a certain way, you wouldn't sit here and say, boy, you know,
21 that's different than what I read in the paper. That's
22 different than what I remembered seeing on television so this
23 witness must be lying. Or that's consistent with what I read

1 in the paper?

2 A I don't see any reason why.

3 Q You could decide this case based upon the evidence
4 and the testimony you hear just inside these four walls of
5 this courtroom?

6 A I believe I could.

7 Q Okay. And again, there's no right or wrong answers
8 here as the Court indicated. What we're trying to do
9 obviously is just find jurors that are fair and impartial
10 that could be fair to both the State and to the Defendant,
11 Miss Roberts.

12 I notice in your questionnaire that you've indicated
13 that you are in favor of the death penalty?

14 A Yes.

15 Q And that you in fact could sentence someone to death
16 if the circumstances warranted it and the law allows it?

17 A Correct.

18 Q So you could sit on a jury and determine not only
19 the guilt or innocence, but then determine what penalty
20 should be given to that defendant and actually go back to
21 this jury room and sign a piece of paper calling for the
22 death penalty?

23 A Yes, sir.

1 Q You would not have a problem doing that?

2 A No, sir.

3 Q Now, we're being a little presumptuous here because
4 what we're talking about are two different trials. I think
5 the Court touched on that. There's sort of two different
6 parts of this trial. We may never get to that point where
7 you have to sign the death penalty. You may find her not
8 guilty, or at least not guilty of the crimes that would lead
9 to the death penalty being imposed, or the specifications
10 thereto, and we wouldn't have to do deal with any of that.
11 Do you understand that concept?

12 I mean, one of the problems is, like I said, this is
13 the only opportunity we get to speak to you. And because
14 this is sort of a two-part trial, we can't put you in the
15 jury box, have you determine her guilt or innocence and then
16 say, okay, she's guilty. Okay. By the way jurors, you're
17 going to have to stick around for a couple more days because
18 you're going to determine if she's eligible for the death
19 penalty and whether she should receive the death penalty.
20 Because we may have some jurors here raise their hand and
21 say, wait a minute, no one ever told me that. And in fact,
22 we've had some jurors this morning who have said under no
23 circumstances I could not impose the death penalty, for

1 whatever beliefs, religious, moral or just their personal
2 opinion. You're not of that type, ilk, though? You could do
3 that?

4 A No.

5 Q This case obviously involves an investigation
6 conducted by the Howland Police Department. And one of the
7 things that was on your questionnaire is that apparently you
8 do know Paul Monroe. He's now the chief but he --

9 A Yes.

10 Q -- was one of the lead investigators, if not the
11 lead investigator in this case. Have you spoken to him about
12 this case?

13 A No, I have not.

14 Q You indicated to the Court through the questionnaire
15 that you are friends with him?

16 A My wife was a life-long friend in high school
17 growing up, went on many vacations with him together. And
18 then in college we went, attended Kent State together at
19 which time we were friends.

20 Q So you knew him from attending Kent State which is,
21 that's about 18, 20 years ago maybe?

22 A Well, we've stayed in touch throughout the years.
23 In fact, he goes to our church.

1 Q Yeah, I saw you guys go to the same church.

2 A Add we converse not about this case of course, but
3 we've talked quite a few times as friends, yes.

4 Q Well, I'm going to tell you, he is probably going to
5 be the lengthiest witness you may see in this trial. He's
6 going to sit right where you are seated and he will probably
7 testify more than any other witness in this case.

8 The fact that you know him, that you went to college
9 with him, your wife apparently went to high school with him,
10 is that going to cause a problem for you in terms of
11 determining this case?

12 A I'm not going to say it's going to cause a problem.
13 I do consider him a good friend. And also working, I know
14 Paul as being very thorough at what he does and I feel that
15 he's pretty good at what he does.

16 Q Obviously they're going to have some concerns
17 because --

18 A Right.

19 Q -- obviously you know this witness for the State.
20 Are you going to give his testimony any more credibility than
21 anyone else's?

22 Let's say, for instance, Paul says, comes in here
23 and sits right where you're seated and says Donna Marie

1 Roberts did or said something. And we're going to get into,
2 touch something here, but she doesn't have to take the stand.
3 But let's assume she's either cross-examined on that or --
4 I'm sorry. Mr. Monroe is cross-examined on that, or Miss
5 Roberts or some witness from the defense says, no, whatever
6 Paul Monroe said was not true. Now, you have to make the
7 determination, not based upon knowing Paul Monroe but knowing
8 how they testified here, their accuracy, their ability to see
9 what they saw. And the Court will give you a bunch of rules
10 to determine how you're going to tell who's telling the
11 truth.

12 Are you going to have a tendency, though, to say,
13 listen, I know they presented some witnesses or they
14 cross-examined Mr. Monroe about certain things but, you know,
15 and he may have lied about something or may have been
16 inaccurate about something, but I know the guy and he's a
17 good guy and I'm going to believe what he said even though
18 they questioned him in a manner that really made him look
19 like he didn't know what he was talking about, or they
20 presented another witness who presented evidence that he was
21 either lying or was mistaken or didn't know what he was
22 talking about. Do you think you'll be able do that?

23 A Yeah. You have to weigh the evidence and what was

1 said. I mean, if it's, if it's Paul's word and the defense
2 brings up five other witnesses that, you know --

3 Q You may say to yourself --

4 A -- contradiction. You may have to look at, weigh
5 the evidence of the five other people.

6 Q What if it's only one person? What if it's one
7 person says one thing and Paul says another, are you going to
8 let that, is that going to effect your ability?

9 A It may. It may.

10 Q Do you think you could separate out that
11 relationship?

12 A That would be tough because I know Paul and, like I
13 said, I feel he does a good job at what he does.

14 Q But you wouldn't give his testimony any more
15 importance than any other witness, would you?

16 A I wouldn't give it any more importance. I would, I
17 don't know. I guess it would be real tough for me to sit
18 there and say, you know, I've know him for 20 years. I don't
19 know this person at all. I can't say that it, I wouldn't do
20 that.

21 Q Would you feel more comfortable if you were on a
22 case that he wasn't involved in? Or does it make you
23 uncomfortable?

1 A Probably.

2 MR. BECKER: Your Honor, I think we have a
3 consensus on this only because of the relationship of Mr.
4 Monroe who I agree everything, with everything you said. I'd
5 give Paul the benefit of the doubt, too.

6 THE COURT: Well, I agree, it would make
7 it extremely difficult.

8 MR. BECKER: I think it's going to be too
9 difficult as well as you know Mr. Monroe, as lengthy and as
10 often as you do.

11 THE COURT: Well, without objection then
12 the Court will dismiss for cause. Michael, we thank you for
13 your time and your participation.

14 A Thank you.

15 THE COURT: Let's break for lunch.

16 (Whereupon, a luncheon recess was taken.)

17 * * *

18 THE COURT: Ready for the next one?

19 WHEREUPON,

20 ROBERT J. YOUNG

21 being first duly sworn, according to law, was examined and
22 testified as follows:

23 EXAMINATION

1 BY THE COURT:

2 Q How are you doing today?

3 A Pretty good.

4 Q You read that handout that we gave you?

5 A Yes, sir.

6 Q You understand that the Defendant here, Miss
7 Roberts, is charged with two counts of aggravated murder with
8 specifications.

9 Under the law of Ohio a person who is found guilty
10 of murder only is subject to the consideration of the death
11 penalty if certain specifications are attached to the
12 indictment. Just because someone murders another person does
13 not automatically mean that they face the death penalty. The
14 indictment returned in this matter has specifications.

15 Now, the burden is upon the State through the
16 Prosecutor to try this case. The defense has no obligation
17 to do anything if they care not to, because the burden of
18 proof is totally upon the State. So this case will be put to
19 this jury and the State must prove beyond a reasonable doubt
20 each and every element of the crime and the elements of the
21 specifications before a verdict could be asked of this jury
22 of guilty. If the State fails to do that, then of course the
23 proper verdict would be one of not guilty.

1 But assuming that the State would be able to prove
2 their case then the matter would go into a second phase. And
3 since that's too late to ask whether or not the person, any
4 person on the jury could make that decision, we have to do it
5 up front to find out what each potential juror's view is of
6 the death penalty. And everybody has their own view of that.
7 Some people believe in the old testament covenant, an eye for
8 an eye. And that is not the law of Ohio. Other people, for
9 various reasons, could never sit on a jury where they had to
10 make that decision.

11 Now the law of Ohio says that if the State proves
12 its case then the State has the right to have that
13 determination made by a jury as to whether or not the death
14 penalty will be imposed. But that question only comes up if
15 the State proves beyond a reasonable doubt in that second
16 hearing that the aggravating circumstances, that is reasons
17 why the death penalty should be imposed, outweigh any
18 mitigating factors. Mitigating factors are reasons given to
19 the jury asking that the death penalty not be imposed.

20 The purpose of the inquiry today of yourself will be
21 to find out a little about, I guess a lot about what your
22 personal views are. Whatever your personal views are, are
23 fine. You're entitled to your own view of those things. But

1 both sides here need an assurance of each of the potential
2 jurors that they're able to follow the law. We've had people
3 on both sides that said they couldn't follow the law because
4 they feel that if a person is guilty of murder they should
5 forfeit their life. Well, that person can't sit because they
6 can't be fair to the Defendant.

7 Likewise, a person who could never make that
8 decision to give the death penalty as a sentence could not be
9 fair to the State. So what these folks will be asking you
10 is, can you follow the law as this jury will have to in order
11 to be fair to both sides?

12 Now, the second area that they will ask you
13 about is any pretrial publicity. Many of the jurors have
14 read something about the case, are aware of some things
15 about it. We had a couple that knew a lot about it.
16 It, for whatever reason, drew their interest. And, again,
17 this jury is going to have to decide this case not on what
18 they've read or think they know about the case presently,
19 but what they will know about the case after they've
20 heard the facts presented in this courtroom. And this
21 decision that they make will have to be made strictly
22 on what they've heard in that courtroom. So
23 they will ask you questions along that line also. Fair

1 enough?

2 A Yes, sir.

3 THE COURT: Prosecution.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q Good afternoon, Mr. Young. My name is Ken Bailey.
7 I'm an assistant prosecutor with the Trumbull County
8 Prosecutor's Office. And as I promised the other week, I'm
9 joined today by Chris Becker, another assistant prosecutor,
10 my co-counsel in this case. And the two of us are
11 responsible for prosecuting this particular case.

12 Now, as the Judge indicated, the reason we ask these
13 questions is to make sure that folks are, whoever is selected
14 to serve on this jury can be fair to both sides, both to the
15 Defendant and the people of the state of Ohio. And that's
16 why we're asking these questions. Not because we're snoopy
17 and we like to pry into what you believe about different
18 things and your background, but rather just to make sure that
19 the folks who are selected can be fair to both sides. And
20 there aren't any right answers. There aren't any wrong
21 answers. Just open, candid answers to these questions.

22 Now, because of the rules of conduct that we have to
23 abide by here, we're not allowed to have any contact with you

1 until -- after we're done here today, until this case is
2 over. If it goes into two different phases, then we have to
3 wait until that second phase is over. If you have any
4 questions that come up pertaining to what we're doing, you
5 can feel free to ask them during this question and answer
6 session that we're having now, okay, that pertains to this
7 case.

8 If we run into each other out in the hallway, the
9 elevator or a restaurant or something, all we're allowed to
10 do is say good morning or good afternoon.

11 If you have questions or anything outside the
12 courtroom here you're going to have to address them to the
13 bailiff when she's here, Laurie Brown, or Richelle or to the
14 Judge. Because if you talk to us, if we said anything more
15 than good morning or good afternoon, it would probably cause
16 a mistrial. We don't want that to happen. So you understand
17 why we don't talk to you. It's not that we're being
18 antisocial or trying to snub you or anything like that.

19 Now, the first query I want to ask you about is your
20 view on the death penalty. Now, the first time you learned
21 that this was potentially a death penalty case was when?

22 A When I came in the first time.

23 Q Is that April 8th or something?

1 A I believe that's when it was.

2 Q Okay. Now, before that had you ever had any
3 discussions or conversations with any family members or
4 friends or co-workers or somebody concerning your view on the
5 death penalty as a possible punishment?

6 A Not really.

7 Q I mean, if cases, do you ever follow criminal cases
8 in the paper or the news, on TV or radio?

9 A I have some.

10 Q And has anybody ever commented, well, gosh, I think
11 this should happen to that person? Did you ever join in that
12 type of a conversation?

13 A Yes, occasionally I have.

14 Q When would that be? At work or at home or where?

15 A At home. I can't really remember any particular
16 matter, you know what I mean?

17 Q Did the death penalty as a punishment ever come up
18 in those particular instances?

19 A No, not that I know of.

20 Q Have you ever expressed any opinion on the issue of
21 the death penalty, either for it or against it?

22 A Never really thought about it that much until just,
23 until this here, this happened, you know what I'm saying?

1 Q Okay. Well, you've had, what's it been, about two
2 weeks or so?

3 A Yes.

4 Q I imagine since you came into court you've been
5 thinking about it quite a bit?

6 A Yes.

7 Q And after having those two weeks to think about it,
8 what's your view now of the death penalty as a punishment?

9 A I don't really feel that I could, you know what I
10 mean? I'm just, I don't feel that I could judge a person,
11 you know what I mean, to that point.

12 Q Okay. Fair enough. What's your viewpoint based on?
13 I mean, is it based on a religious belief? A personal
14 belief? Some ethical or moral belief, or a combination of
15 those?

16 A It's a combination.

17 Q Combination of what?

18 A Of religious, you know what I mean, belief and
19 morals. It's --

20 Q Okay. Religious and moral. Your religion is --

21 A Protestant.

22 Q Is there anything in your religion that prohibits
23 the death penalty as a punishment?

1 A Not that I'm aware of. I don't know.

2 Q When you say it's partly religious, how do you mean?

3 A I don't know. I just feel it's not right for
4 another human being to judge, you know, to me.

5 Q A lot of folks may feel that way. It's important in
6 our system in America that folks have viewpoints on all sides
7 of the issue; right?

8 And as the Judge said, if somebody would come in and
9 say, well, I think for a planned murder for profit the person
10 should automatically, if they're found guilty they should
11 automatically get the death penalty. That wouldn't be fair
12 to the Defendant, would it?

13 A No.

14 Q And by the same token, if somebody came in and said,
15 you know, I believe the death penalty has a place in our
16 society but I personally can't have any part in it. And it
17 would be unfair for the State to have somebody like that sit
18 on a jury because they would never be able to return a death
19 penalty verdict in an appropriate case; right?

20 A Right.

21 Q So if I understand what you're saying, do you
22 believe in the death penalty as a punishment for certain
23 crimes?

1 A For certain crimes.

2 Q What types of crimes?

3 A For murder, you know, and things of that nature, you
4 know what I mean? It's --

5 Q Okay. But you're saying that your own beliefs don't
6 allow you to sit on a jury and render a verdict?

7 A I would rather not, you know what I'm saying? It's
8 like, like I said, I have problems with it.

9 Q Well, are the problems to such an extent that you
10 think that would affect your ability to return -- well, the
11 Judge explained in a death penalty case the case is tried in
12 two different, it can be tried in two different phases. The
13 first phase deals with the issue of guilt or non guilt. Did
14 she do what she's charged with? Can we prove that she did
15 what she's charged with or not? Okay.

16 Now, if we don't prove that to your satisfaction by
17 what we call proof beyond a reasonable doubt, then you got to
18 find her not guilty of that; right?

19 A Right.

20 Q But let's say we do prove her guilty so that you and
21 the other jurors are convinced that she did what she's
22 charged with doing; right? Okay. If you and the other
23 jurors find her guilty of a crime called aggravated murder

1 and one or more of these special findings, special findings
2 of fact that make her eligible for the death penalty, we
3 would go on to a second phase where the issue would be
4 punishment, and the death penalty would be one of those
5 options.

6 Now, do you think, your personal feeling about the
7 difficulty that you have not judging people would effect you
8 in the first phase so that if we were to prove the crime of
9 aggravated murder and one or more of these specifications
10 beyond a reasonable doubt so you're convinced she did it, do
11 you think it would effect your ability to sign a guilty
12 verdict in that first phase knowing that she would be
13 eligible for the death penalty in the second phase?

14 A I don't know. It's hard to say. Like I said, it
15 probably would.

16 Q It probably would effect your ability to return that
17 verdict?

18 A Yes.

19 Q Now let's say we got to a second phase. Let's say
20 you found her guilty in the first phase, and the issue in the
21 second phase is one of punishment. Punishment is not
22 relevant in the first phase because the issue is guilty or
23 not guilty; right?

1 A Right.

2 Q In the second phase you've already determined her
3 guilty of aggravated murder and a death penalty specification
4 or two. Okay. In the second phase the Judge talked about
5 doing this balancing test where on one side of the scale you
6 got these special circumstances, the aggravating
7 circumstances, special findings of fact that make her
8 eligible for the death penalty, that it was committed during
9 an aggravated robbery with prior calculation and design. It
10 was committed during an aggravated murder, burglary with
11 prior calculation and design.

12 On the other side of the scale there can be what we
13 call mitigating factors. That's a fancy word. It just means
14 certain facts that may work in favor of the Defendant, that
15 would work against the death penalty. Okay. You would have
16 to do this balancing test. And if you and the other jurors
17 found that the, that we prove that the aggravating
18 circumstance or circumstances outweigh these mitigating
19 factors, then in that case, beyond a reasonable doubt, then
20 the death penalty would be an appropriate punishment and you
21 would have to come back with a verdict finding that for the
22 death penalty; do you understand that?

23 A Right.

1 Q Are you saying that based on your personal beliefs,
2 your religious beliefs, would you be able to sign the death
3 penalty verdict form in a second phase?

4 A I really don't believe I could.

5 Q You think that your personal beliefs are such that
6 it would effect your ability to sign that verdict form?

7 A Yes, sir.

8 Q And fair enough. I mean, if that's how you feel
9 it's important that you tell us because not only should the
10 Defendant get a fair shake in the trial, but it's important
11 that the people of the State get a fair shake. And if you
12 can never sign that verdict form it would be too late to go
13 through the whole trial, and we get to the end of the case
14 and you say, gosh, I told him I could be fair and impartial
15 when we get to this point, and now based on my personal
16 beliefs and my religious beliefs there's no way, no way in
17 creation that I could sign that form, and I'm not going to do
18 it. The State would never get a fair shake there even though
19 we proved everything beyond a reasonable doubt. And we would
20 never know that; right?

21 A Right.

22 Q Okay. So you're saying it would effect you to such
23 an extent that you would never sign that verdict form?

1 A Yes.

2 Q Okay. There's nothing wrong with that. Defense
3 counsel will have an opportunity to talk to you.

4 EXAMINATION

5 BY MR. INGRAM:

6 Q Good afternoon. You're gripping that coat mighty
7 hard over there. Are you a little uncomfortable?

8 A Nervous.

9 Q My name is Jerry Ingram, John Juhasz, we represent
10 Donna Roberts. I just got a couple questions. Were you here
11 for the general orientation instruction Tuesday, I think it
12 was Tuesday, April 8th? It was down at the other end of the
13 hallway.

14 A Yes, sir.

15 Q Where were you during those instructions? Were you
16 seated or were you standing?

17 A Standing.

18 Q As you walked into the courtroom did you go to the
19 left or to your right?

20 A To the left.

21 Q Were you standing along, near the windows there?

22 A Right by the door.

23 Q Right by the door. While you were standing there

1 did you hear any of the other prospective jurors discuss
2 anything about this case?

3 A Nothing that I remember.

4 Q Did you say anything about this case to anyone else?

5 A No.

6 Q Did anyone say anything about the case to you?

7 A Not that I remember.

8 MR. INGRAM: I have no further questions,
9 Your Honor.

10 THE COURT: Bob, can I ask you one
11 question? Is part of the reason you feel like you do because
12 this happens to be a female rather than a male?

13 A That could have quite a bit to do with it.

14 THE COURT: That's something that's
15 entered your mind?

16 A Yes.

17 THE COURT: Okay. Anyone have objection
18 to me moving him for cause?

19 MR. BAILEY: No, Your Honor.

20 MR. INGRAM: No.

21 THE COURT: Sir, thank you very much.

22 * * *

23 WHEREUPON,

JOHN D. LANAM, SR.

2 being first duly sworn, according to law, was examined and
3 testified as follows:

EXAMINATION

5 BY THE COURT:

6 Q Mr. Lanam, have a seat up here. How are you doing
7 this afternoon?

8 A Okay.

9 Q John, you read the handout that was given to you?

10 A Yes, I did.

11 Q You have a pretty good idea of why we're here. The
12 reason that you're in here individually today is to allow
13 both sides to ask you questions concerning two main areas.
14 Some of the attorneys have pointed out that it seems like
15 we're putting the cart before the horse, but no one knows
16 what this jury will do with the charge of aggravated murder
17 when it's heard.

18 If the State is unable to prove beyond a reasonable
19 doubt each and every element of the charge of aggravated
20 murder with the specifications, then this jury could return a
21 verdict of not guilty. But if the prosecution is able to
22 prove their case beyond a reasonable doubt, then this jury
23 would be called upon to sit and listen to further evidence on

1 the aggravating circumstances. Now, those are reasons that
2 the State would put forward to the jury to convince the jury
3 that the death penalty would be warranted.

4 The defense has an opportunity to present mitigating
5 factors at that hearing. And those are reasons why the jury
6 should, after consideration, not impose the death penalty.
7 The burden is always on the State to prove their case beyond
8 a reasonable doubt. The Defendant need prove nothing.

9 Some people feel that whenever a life is taken the
10 person who took that life should forfeit theirs. That is not
11 the law of Ohio. So that type of person could not be fair to
12 a defendant, because the law doesn't say that. Other people
13 could, under no circumstances, ever see themselves making
14 such a decision that would address whether a person lives or
15 dies. And that's fine. But that person could not be fair to
16 the State by sitting on the jury.

17 So what both sides to this lawsuit, through their
18 attorneys, are looking for are 12 people to sit on this jury
19 who could follow the law. Every person on this jury,
20 whenever we get it picked, are going to have some view of the
21 death penalty. It's only natural. Some will be more in
22 favor of it than others. But whatever their personal view
23 is, they have to be able to set aside any feeling that they

1 have and follow the letter of the law. If that doesn't
2 happen then we haven't had a fair trial. And that's the
3 worst thing that can happen in any trial, if there's been
4 something that has made it unfair.

5 Now that's quite a bit to ask of people. But I
6 suspect a good portion of the population are able to do that.
7 I don't know that anybody really likes to do that. But it
8 depends on the person's motivation, and they feel it's their
9 duty, which it is all of our duty to serve if possible. Then
10 they're willing to do that.

11 The questions that will be put to you is to inquire
12 into your personal beliefs on this matter. Whatever your
13 personal thoughts and beliefs are, are fine. You're entitled
14 to them. We will not judge you or say anything to you to
15 embarrass you. We'll accept whatever your view is. But it
16 is important that you answer these questions as you really
17 believe so that they're able to make up their mind as to
18 whether they feel you could be fair.

19 The other line of inquiry will be about any pretrial
20 publicity, whether you were particularly interested in this
21 case, whether you had a passing knowledge of it, or whether
22 you have something in your mind that would make it difficult
23 to set that all aside. Because, again, in order to have a

1 fair trial this jury is going to have to start out fresh and
2 decide only on the evidence presented in this courtroom.
3 Many of those things that appeared in the newspapers may or
4 may not be correct, you never know which. And it just
5 wouldn't work if anybody decided the matter on anything other
6 than the evidence presented here and the law which the Court
7 will give. Fair enough?

8 A Yes.

9 THE COURT: Okay. Mr. Becker.

10 MR. BECKER: Thank you, Your Honor

11 EXAMINATION

12 BY MR. BECKER:

13 Q Is it Mr. Lanam?

14 A Yes.

15 Q My name is Chris Becker. I'm with the county
16 prosecutor's office. And this is Mr. Bailey. I think
17 probably about two weeks ago he was in the courtroom. I was
18 in another matter so I couldn't be there. I'm assuming you
19 recall Mr. Ingram and Mr. Juhasz were there as well as their
20 client.

21 The Court sort of gave you a ground, sort of a
22 framework or ground rules for what we're going to be asking
23 you here today. And it's very important that if you have any

1 questions you ask here, because this is really the only time
2 that we get to ask you questions. And if you have any
3 questions, you can ask us. Because once the trial starts and
4 once you're seated in the jury box, assuming you are, we
5 can't speak to you again. We can't say, hey, what did you
6 think of that? Or what do you think of that?

7 And one of the problems that we kind of have, sort
8 of an awkward situation, but one of the things we have to do
9 here is we have to be presumptuous and assume we're going to
10 get to a point in this case where one of the penalties and
11 one of the options is going to be the death penalty. You may
12 not get that far. You and your fellow jurors may determine
13 that she committed no crimes or she didn't commit crimes that
14 warrant the imposition of the death penalty. But we have to
15 ask you these questions now because if we get close to the
16 end, when we get to that point and someone says I can't do
17 it, then we've come a long way for no reason. So looking at
18 your questionnaire, I believe that your feelings are that you
19 could impose the death penalty?

20 A Yes.

21 Q Not in every circumstance but in some situations?

22 A Yes.

23 Q And as the Court indicated to you, the death penalty

1 is not automatic. There's no crime where you automatically
2 get the death penalty, but it's a weighing process. And it's
3 going to be just like that in the first phase dealing with
4 guilt or innocence. And then you're going to get to the
5 second phase and you're going to have to weigh some different
6 things about what we call aggravating circumstances and
7 mitigating factors. And you'll again have to weigh that.
8 And you will be given four options if we get to that point of
9 the death penalty: life with no parole; life with parole
10 after 30 years in prison, and; life with parole after 25
11 years in prison. So you understand you will have all four of
12 those options.

13 And I guess the questions that we want to ask is, do
14 any of those options have a head start or an advantage in
15 your mind if you were to get to that phase?

16 A No.

17 Q You would equally consider all of them?

18 A All of them, yes.

19 Q And you would follow the Court's instructions
20 regarding how you were to weigh this evidence and this
21 testimony if we got to the second phase. And you would make
22 a finding as to which one of those four penalties would be
23 appropriate; correct?

1 A Right.

2 Q So you wouldn't come in here -- and it's perfectly
3 fine to tell us. I mean, everybody has their opinions.
4 And, again, there's no right or wrong answers. But some
5 people come in here and they obviously can't be jurors
6 because they say, listen, I'm so in favor of the death
7 penalty that if you're convicted of a crime involving the
8 killing of someone else, I think you should die, so I would
9 give the death penalty in every case where I found that
10 someone killed another person. You don't have that mindset;
11 right?

12 A No, I don't.

13 Q And on the other side of that coin, there's some
14 people that have come in here already that have said I, you
15 know, maybe I believe in the death penalty but I could not
16 personally do it, or, I don't believe in the death penalty
17 and I'm against the death penalty. Well, that's not fair to
18 the State either because our Legislature has said that that
19 is a fair penalty in this state if you commit certain crimes
20 and certain things are proven in that second phase. So our
21 Legislature has said under certain circumstances it's okay to
22 impose the death penalty.

23 You would give them all equal value and you would

1 weigh the evidence, and if the State were able to prove that
2 the aggravating circumstances outweighed beyond a reasonable
3 doubt the mitigating circumstances, once we got to that point
4 you would be able to find the Defendant deserved the death
5 penalty?

6 A Yes, I would.

7 Q And you could sign a verdict form calling for the
8 death penalty with 11 other jurors?

9 A Yes.

10 Q And on the same line of reasoning, if the State were
11 not able to prove that the aggravating circumstances
12 outweighed the mitigating factors by proof beyond a
13 reasonable doubt, you would have no problem considering one
14 of the other, what we call life options?

15 A No.

16 Q Now I want to ask you a little bit about, I think on
17 your questionnaire you indicated that you have not heard
18 anything about this case?

19 A When I did that, I did that the day of the thing.
20 And after that I learned that -- I didn't recognize her name.
21 I recognized whatever the name was used, Fingerhut.

22 Q Fingerhut?

23 A Yeah, I think that's what I recognized.

1 Q The deceased individual?

2 A Yeah. That's the name I took to the thing. But I
3 didn't recognize her that day when I filled out the
4 questionnaire. And I didn't want to go whitening it all out
5 and change it.

6 Q No problem. That's what this process is for, so we
7 can figure out maybe what you do or don't know, or maybe
8 things have come up since this. Because obviously it's been
9 a couple weeks now since you filled this out. What is it
10 that you know about this case?

11 A Very, very little. All I just know is just the way
12 I understand it from what I picked up, and I haven't read a
13 lot about it so, it was for, her and a boyfriend killed her
14 husband or other boyfriend, whatever it was, and for money.
15 That's about all I, I know of.

16 Q And where did you get that information from?

17 A I think when it first happened. It's been a long
18 time ago. And some things I read and some things I don't pay
19 that much attention to. If it doesn't catch my interest I
20 won't read it.

21 Q Now, what you know about this case and what you
22 would have read, that's not going to effect your ability to
23 sit as a juror, would it?

1 A No.

2 Q You don't come in here with a mindset of, boy, I
3 read this in the paper, it's got to be true. She's sitting
4 here with two attorneys. They wouldn't have charged her.

5 A No.

6 Q You understand that the process by which she got
7 charged is called a grand jury indictment. And the grand
8 jury has no judge there. The grand jury has no defense
9 attorneys. In fact, Miss Roberts is not even there. There's
10 really only one side of the case, and that's the prosecution
11 side. And the standard of proof is much lower as opposed to
12 proof beyond a reasonable doubt. So you don't hold the fact
13 that she's indicted in this case, you read something about
14 it, against her?

15 A No.

16 Q And you don't come into this courtroom saying, well,
17 we're here, they're asking me questions, she's got to be
18 guilty.

19 A No.

20 Q Have you ever sat -- I didn't see in your
21 questionnaire. Have you ever served on a jury before?

22 A No.

23 Q So this would be your first time?

1 A I got called one time when I lived in California,
2 but I sat around for about an hour, then our whole group was
3 excused. That's the closest I ever got.

4 Q When you realized you had to serve on this jury,
5 what was your first reaction or what did you say?

6 A I don't know. I always thought to myself if I ever
7 got on one I would like it to be something more than a car
8 accident or something. But now --

9 Q Well, you understand, I mean obviously this is a, in
10 essence, a life and death situation. It is serious. Does
11 that have any play in it?

12 A No.

13 Q Would you rather say, boy, I don't want to be
14 involved with something that serious?

15 A I feel it's my duty, like the Judge says.

16 Q And you would be able to fulfill your obligation,
17 you believe, as a juror in this case?

18 A Yes.

19 Q One of the things that we talked about is, like I
20 said, we may never get to the point where we determine what
21 penalty is appropriate in this case. You may find her not
22 guilty of the crimes charged. Mr. Bailey and I certainly
23 believe you will, but that's up to the evidence and what we

1 have to convince you of.

2 One of the things that you're going to have to deal
3 with is some concepts that are involved in the legal system.
4 And you hear them on TV. You probably read them in the
5 newspaper. And that's proof beyond a reasonable doubt. And
6 everybody has I guess a different idea of what that term
7 means.

8 The best example I ever heard of people speaking
9 about reasonable doubt is people talking about glasses of
10 water, being whether they're full or not full. The Court is
11 going to give you a definition of what reasonable doubt is,
12 but it's not going to be, well, the State, if the State has
13 seven witnesses they win or if you, if you're here for three
14 days the State wins or anything like that. So it's nothing
15 quantitative that you can measure. It's really sort of a
16 quality type of standard.

17 And one of the things that we sometimes tell people
18 and we ask people are, do you believe that the case could,
19 that the State, rather, could prove its case with just one
20 witness if that witness was so good and so reliable? For
21 instance, if there was a traffic accident, like you
22 mentioned, and the witness happened to not have anything to
23 do with either party, witnessed the whole thing. Is very

1 observant. Wrote everything down right after it happened.
2 Saw the whole thing. It was a clear day. Has no vision
3 problems. Do you believe you could probably find a person
4 guilty based upon just one witness; correct?

5 A If the evidence was there, right.

6 Q If that witness was good enough and if the facts
7 were good enough?

8 A Right.

9 Q On the other side of that coin, though, I guess we
10 could parade in ten witnesses on an issue and, that same
11 traffic accident, for instance, and, you know, seven of them
12 may be nearsighted or farsighted, not even have their glasses
13 on. And two of them may have been paying attention to
14 something else that was going on in courthouse square, if the
15 accident happened here on say High Street and Elm Road -- I'm
16 sorry -- Park Street here and High Street. And two of them
17 were watching a band playing on the courthouse square. And
18 five or six of them couldn't see because they were going to
19 go get their doctor's prescription or their eyeglass
20 prescription filled. And the other one was related to one of
21 the drivers. That would kind of be a bad group of witnesses
22 to have. So there's differing degrees of witnesses. And you
23 might be able to get by with one. You might not be able to

1 get by with ten; right?

2 A Yeah.

3 Q And when we go to that glass of water, the State has
4 to prove that that glass is pretty full for reasonable doubt.
5 Maybe not all the way to the top, but maybe within an inch or
6 some people might say half an inch or even a quarter inch,
7 depending on how big the glass was. But we would have to get
8 pretty close to the top.

9 You wouldn't hold the State, though, to filling that
10 glass up beyond all doubt because the Court is going to tell
11 you you can't do that. So you'll follow the Court's
12 instructions?

13 A Yes.

14 Q And you understand it's reasonable doubt. And
15 that's doubt based on reason and common sense. There may be
16 things out there, for instance, if we're talking about our
17 car wreck, the guy may go through the intersection and hit
18 somebody who had, who had the -- I'm sorry -- had the green
19 light. And the guy may have gone through the red light. And
20 there may be witnesses to it. There maybe two or three
21 witnesses. There may be five.

22 You have to look at each and every one of those
23 witnesses to see how observant they are, whether they have

1 some kind of interest. Maybe one of them is related to the
2 defendant. Maybe one of them is related to the victim.
3 Those are all kind of things that would play into your
4 weighing of who's telling the truth; right?

5 A Right.

6 Q And you believe you can do that?

7 A I believe I can do it.

8 Q And additionally, there may be scientific evidence.
9 There may be a guy from the Highway Patrol who come out and
10 measured the skidmarks and said, listen, not only did this
11 guy go through the red light, he was speeding. The speed
12 limit is 25 here. And I measured the skidmarks marks and how
13 long it took him to skid and the impact. He was probably
14 going about 45 through that intersection. But if he didn't
15 know what he was talking about or had never done that before,
16 or if it was just some guy who said, I just measured them and
17 I've never done this before, you would be a little less
18 skeptical than somebody who had done that maybe for ten years
19 and testified in many courts many, many times; right?

20 A Right.

21 Q All right. But that's kind of what being a juror is
22 about. You've got to determine who's, who's telling the
23 truth, who has more to gain or lose by their testimony. Who

1 is in a good position to see something or hear something or
2 be a part of something. And eventually what all that means
3 as it relates to the elements of the crimes, because we have
4 to prove all of the elements by proof beyond a reasonable
5 doubt, not just two or three. You feel you could make those
6 kind of decisions and judgments?

7 A Yes.

8 Q Now, in this particular case, as in every criminal
9 case, the Court is going to tell you that you can't consider
10 sympathy. And that's a hard thing to do sometimes. And it's
11 easy to be sympathetic to people, whether it be a car wreck
12 or a homicide case or maybe somebody is suing somebody over
13 money because their house wasn't built right or they didn't
14 get a car that was reliable and something was wrong with the
15 car. Do you feel you could separate any sympathy you may
16 have out of this case?

17 A Yeah.

18 Q Because you're going to see some photographs
19 involving Mr. Fingerhut. And they're not going to be pretty
20 pictures. They're going to be difficult to look at. And
21 some people may look at those and say, boy, this poor guy,
22 look what happened to him. And I know they've proven some
23 things, and they kind of implicated her, but they really

1 didn't prove it. But I can't let this poor guy end up like
2 this so I'm going to find her guilty; you wouldn't do that?

3 A No.

4 Q And by the same token, on the other side of that
5 coin you wouldn't say, listen, the State proved all of the
6 elements beyond a reasonable doubt and I'm convinced she's
7 guilty but, boy, I look at her and I think, boy, she looks
8 like a nice lady. I can't imagine she did this. I don't
9 want to see her go to prison. I don't want to see her get
10 the death penalty. I'm going to find her not guilty. You
11 wouldn't do that either?

12 A No, I wouldn't do that.

13 Q The charges in this case are basically four counts.
14 And the Court will later on tell you if you're selected as a
15 juror what the elements are for those crimes, and what
16 they're defined and what we have to prove to you.

17 The crimes basically are aggravated burglary,
18 robbery, and then there's two death penalty charges. There
19 are two different theories, I guess, of the case as to how
20 the State is going to present this. And the Court will tell
21 you, you're free to find her guilty if we prove our case of
22 all of them, some of them or none of them.

23 The death charges or the aggravated murder charges

1 also include what we call specifications. And you have to
2 make those findings as well to get to that second phase, to
3 get to the death penalty consideration. So you have to find
4 her guilty of the charges, especially the aggravated murder
5 charges, then you have to find her guilty of some
6 specifications, and then we would go to the second stage.

7 In this particular case I'm going to tell you,
8 Mr. Bailey and I will be very honest with you and very open,
9 you are not going to hear testimony that Donna Roberts was
10 the actual killer. She did not pull the trigger in this
11 case. And we're going to tell you that right now. And we'll
12 probably tell you that again if you're selected for the jury.
13 Does that change in your mind how you feel about this case?

14 A No.

15 Q You feel that you could still, if the State met all
16 of its burdens throughout the trial and proved to you beyond
17 a reasonable doubt the elements of the crimes, and that also
18 proved beyond a reasonable doubt that the aggravating
19 circumstances outweigh the mitigating factors, that you could
20 still impose the death penalty if we would prove all of that
21 to you?

22 A Yeah.

23 Q Even though she's not the actual killer?

1 A Yeah.

2 Q All right. Now, along those lines, what the Court
3 is going to tell you is that she's what we call an aider and
4 abettor or a complicitor. That doesn't change anything for
5 you, though; correct? You will follow the Court's
6 instructions and make your determination appropriately, okay,
7 and you agree with that?

8 A I agree with that.

9 Q Now, in this particular case you're going to hear
10 from a lot of police officers as well. Some Howland Police
11 officers. Some Trumbull County Sheriff's deputies. You
12 don't have any connection, other than I think I saw that you
13 had some correction officers that are relatives?

14 A Yeah, in California.

15 Q The fact that you -- yeah. And they're not even in
16 this state. The fact that you are related to people that I
17 guess are, would be, we would consider working in law
18 enforcement, is that going to effect your ability to serve as
19 a juror?

20 A No.

21 Q Because sometimes people that have law enforcement
22 officers in their family may say, boy, I got an uncle that
23 works for the sheriff in Summit County or he's a police

1 officer in Youngstown, I couldn't find him guilty because --
2 or not guilty because if I don't, boy, I'm going to get a lot
3 of heck from him. That wouldn't have any --

4 A No.

5 Q -- feeling in your case? Now, I noticed it was your
6 father that worked for the, for the --

7 A Fire department.

8 Q -- fire department. Is he still involved in that
9 business?

10 A No. He's retired.

11 Q And you indicated one of the things that concerns
12 you about the justice system is that sometimes the rich are
13 able to drag out their cases long and get better
14 representations?

15 A Yeah, that's the way I see it.

16 Q Is that generally the --

17 A It seems like they go a long time. It takes a long
18 time for it to all be done.

19 Q Do you have any particular case that leaps out at
20 mind at you?

21 A Mostly your high profile.

22 Q You're talking about like O.J. Simpson?

23 A O.J. type stuff like that, yes.

1 Q I hate to use that example in the courtroom. Is
2 there anything else that you feel is wrong with the judicial
3 system?

4 A No. It's all in all, fair. Like I said on there,
5 sometimes it seems to me that the less fortunate don't get
6 the same kind of representation. I can't say that the judge
7 or the attorney ain't doing the best that he can do, but it
8 just, it just seems that way to me.

9 Q You would agree, at least in this particular case,
10 Mr. Ingram and Mr. Juhasz are going to do their best to
11 present their side of the case. And obviously Mr. Bailey and
12 I are going to do our best. And, you know, none of us I
13 don't think here are millionaires, so we don't have those
14 kind of worries in this case; right?

15 A Yeah. But that's just the way I --

16 Q That's one of your big problems that you see with
17 the justice system?

18 A Yes.

19 Q Is there anything that leaps out at you that you
20 feel you want to tell us about?

21 A No.

22 Q Now, in this case, in addition to testing the
23 witnesses and determining the witness' credibility, you have

1 to look at evidence, too. And the evidence can include their
2 testimony and then maybe physical exhibits that you'll have
3 before you.

4 In this case there's probably going to be what we
5 call some circumstantial evidence. When I say circumstantial
6 evidence, does that bring up an image to your mind?

7 A No.

8 Q You say, boy, that's bad if they have to say
9 circumstantial evidence?

10 A No. I understand what it is.

11 Q It's sort of, it's sort of -- the example that we
12 often use is sort of, if you go to bed at night and watch the
13 weather and they say, boy, it's going to rain. And they got
14 those green globs on the radar that are from maybe Sandusky
15 down to Columbus. And you're watching Channel 33 or 27, or
16 21, whatever news you watch, and you go to bed and look out
17 your window and it's clear out there. You can see the moon.

18 You go to bed. And the next morning you wake up and
19 it's raining, pouring rain. You didn't see it but you heard
20 it on the roof. And you saw lightening maybe in the night
21 sky at 4:00 in the morning. And you wake up and everything
22 is wet in the driveway. Your car is wet. Your neighborhood
23 is wet. There's water running down the sewer into the

1 gutter. You never saw it rain, but you can infer that it
2 rained. You don't have a problem making those kind of
3 inferences?

4 A No.

5 Q And you understand some inferences you may have to
6 be careful of. For instance, if you watch the same weather
7 reports and if you're like me, sometimes they don't get it
8 right. And you woke up the next morning and they said, boy,
9 it's going to rain tonight. And they showed you those same
10 green globs, but they were kind of scattered around. They
11 said, boy, there's a good chance it's going to rain tonight.
12 Close the windows. Don't let your dogs out.

13 And you wake up the next morning and you look out
14 your window and it's all wet. You say, boy, it might have
15 rained last night. And then you look further down the window
16 and you see your wife out there with the hose spraying off
17 the driveway and sidewalk. And you look at your neighbor's
18 driveway and it's dry, and the street is dry. And there's no
19 water in the gutter. You might say to yourself, well, she's
20 just watering and spraying off the driveway or washing the
21 car or whatever. It didn't rain last night. So you have to
22 be careful how you make those inferences. But you can make
23 those inferences if you have to?

1 A Yes.

2 Q And the Court is going to tell you that those kind
3 of inferences will have the same weight as direct evidence.
4 For instance, if somebody says, yeah, I was up all night. I
5 was standing in the rain and I got wet. I saw it. So those
6 kind of inferences can have the same weight as something that
7 someone actually saw; correct?

8 A Right.

9 Q And you wouldn't have a problem making those
10 decisions?

11 A No.

12 Q I want to go back a little bit to -- you had
13 mentioned in your questionnaire that with reference to the
14 death penalty you felt that it was basically to be for crimes
15 against elderly and kids because they were the least able to
16 defend themselves. There are other situations where you
17 would be able to find the death penalty appropriate?

18 A Oh, yeah. Those are kind --

19 Q Those just pop to mind?

20 A Right.

21 Q Because in this case I don't think anyone would
22 consider Mr. Fingerhut elderly. He certainly wasn't a child.
23 But if we were able to prove to you the first phase, get past

1 that first phase and get to the second phase and prove to you
2 by proof beyond a reasonable doubt that the aggravating
3 circumstances outweigh the mitigating factors, he's certainly
4 not going to be proving to you that he's in his '70s, '80s or
5 '90s. And he's certainly not going to be a four or five-year
6 old child. But we believe there may be circumstances there
7 that would warrant the death penalty. You would still be
8 able to impose it if we met our burden?

9 A Yeah.

10 Q Okay. Nothing else, anything that leaps out to your
11 mind? Any questions?

12 A No.

13 Q A little bit bigger than a traffic case, huh? You
14 filled out a little two-page questionnaire, and then you
15 filled out the lengthy one. On one you said you were a
16 victim of a crime or knew the victim, and then the other one
17 you said you didn't.

18 A No, I've never been --

19 Q Okay. You must have circled the wrong box?

20 A I might have.

21 Q You don't know anyone from the prosecutor's office,
22 never had to deal with the prosecutor's office?

23 A No.

1 Q Thank you very much.

2 THE COURT: Mr. Ingram.

3 EXAMINATION

4 BY MR. INGRAM:

5 Q Hi. How are you?

6 A All right.

7 Q I'm Jerry Ingram. John Juhasz. We share the
8 responsibility of representing Donna Roberts who's on trial
9 for her life. As you can imagine, we take our responsibility
10 serious.

11 A Uh-huh.

12 Q Feel we should take every reasonable precaution in
13 selecting a fair-minded jury, the same type of jury that you
14 or I would want if we were on trial; does that sound fair
15 enough to you?

16 A That's sounds fair.

17 Q This is the only opportunity we can talk directly to
18 one another and determine whether you're comfortable sitting
19 on this case.

20 Lawyers are trained, I guess, in that three-year
21 ordeal that we have to go through called law school to
22 monopolize conversations. And during our discussion up here
23 my tendency will be to monopolize the conversation. But why

1 don't you try to stop me from doing that? And whenever
2 anything pops into your mind, whenever there's a question,
3 whenever there's something that you would like to volunteer,
4 would you please do that?

5 A Yes, I will.

6 Q This is a lot like a job interview but when you went
7 to get the job you chose the job that you were going to go
8 apply for?

9 A Right.

10 Q In this case the jury wheel spun your name out and
11 we chose you and summoned you down here. But the process is
12 the same. And we're interviewing you today for the most, one
13 of the most important jobs there is, the job of finding the
14 truth and determining the fate of another human being.

15 My first question to you is, how do you feel about
16 being asked to assume that responsibility?

17 A I have no problem. I feel it's my duty. And that's
18 why I vote all the time. I, like I said, I always, I always
19 felt, you know, if it was my time I wasn't going to try to do
20 anything to get out. I don't have no problem doing it.

21 Q I believe that, that you thought to yourself about
22 jury duty that you always wished that you, if you got called
23 that it wasn't for a rear-ender, so to speak?

1 A Right.

2 Q Well, this isn't a rear-ender. Have you thought
3 about the challenges, being a juror in this type of case,
4 poses since you left here on Tuesday, April 8th?

5 A Yes. Once I realized, you know, and thought about
6 it all, yeah. It's a pretty big deal, I would say.

7 Q Well, what did you think about it?

8 A I, I know I can do it, I mean, if I was in that
9 spot. I never had doubts or thought, no, I wouldn't want to
10 be in on that one as far as that goes. I have no problem
11 doing it.

12 Q If you're selected as a juror your job
13 responsibility would be to fairly determine the facts of this
14 case.

15 A Uh-huh.

16 Q You also have a job responsibility now, and that job
17 responsibility is to tell us if you think you would have any
18 type of a problem giving either side a fair shake?

19 A No, I wouldn't. I would be fair. As the
20 evidence --

21 Q In a nutshell, this case boils down to the
22 government's allegation that Donna Roberts plotted or
23 conspired with a male companion, Nate Jackson, to cause the

1 death of Robert Fingerhut.

2 Donna and Robert were divorced, but they continued
3 to work together at the Greyhound Bus Station in Warren and
4 Youngstown, and to live together in Howland Township. And
5 you understand that this trial is about the guilt or
6 innocence of one person and one person only, and that's Donna
7 Roberts.

8 Throughout the, throughout the course of these
9 proceedings you'll hear the name Nate Jackson. And you may
10 be convinced shortly into these proceedings that Nate Jackson
11 did what the State says he did. The question here is, did
12 Donna help him or not; do you understand that?

13 A Right.

14 Q So we're not concerned about Nate Jackson. We're
15 concerned about Donna Roberts. Do you have that clear in
16 your mind?

17 A Got it.

18 Q And when Mr. Becker was talking to you about
19 accomplices; do you remember that?

20 A Uh-huh.

21 Q And I think he told you that Donna was an
22 accomplice. Well, Donna is alleged to have been an
23 accomplice. It's only an allegation. And you are here to

1 determine whether that allegation is true or not; do you
2 understand that?

3 A Right.

4 Q Just because the allegation is leveled doesn't mean
5 that it's true, does it?

6 A No.

7 Q In support of this allegation that Donna aided or
8 participated in the death of Robert Fingerhut, the State will
9 present various letters and recorded conversations between
10 Donna and Nate Jackson. Some of those letters and tape
11 recordings are sexually explicit. And to be absolutely
12 candid with you, some of them are rather offensive. The
13 allegation here is murder not loose morality; do you
14 understand that?

15 A Right.

16 Q And no matter how shocked or offended you may be by
17 the sexual nature of some of this evidence, it's going to be
18 your job responsibility to test that evidence to see if it
19 ties Donna Roberts to the death of Robert Fingerhut. You
20 think you're up to that?

21 A Yeah.

22 Q Donna denies that she participated by conspiracy,
23 plot or otherwise in the murder of Robert Fingerhut. Do you

1 think you would have a problem giving a woman such as Donna
2 Roberts a fair shake during a trial like this?

3 A Yeah, I can do that.

4 Q You can give her a fair shake?

5 A Yeah.

6 Q Would you have the courage to acquit, that is vote
7 not guilty, if you felt a not guilty verdict was warranted by
8 the evidence?

9 A Yes, I would.

10 Q Now, when you were talking with Mr. Becker about
11 publicity the two of you used the word know, what you knew or
12 what you know. And I believe when you were talking with him
13 you said that you knew that her and her boyfriend killed her
14 husband for money.

15 A That's what I believe I know about it.

16 Q That's what you read in the newspaper?

17 A Yeah.

18 Q You don't know that to be true, do you?

19 A I don't know that to be true, no.

20 Q And you sometimes believe what you read in the
21 newspaper, sometimes don't believe what you read in the
22 newspaper?

23 A Yeah, I guess. Depending on what it is, I guess.

1 Q When you read this, when you read about this back in
2 December of 2001, because I think you said that you read it
3 shortly after --

4 A After the incident.

5 Q After the incident. That was back in December
6 of '01. Did what you read or see on TV create any
7 impressions in your mind?

8 A No, I never thought much about it.

9 Q Do you recall reading anything or hearing anything
10 about letters, tape recordings?

11 A No.

12 Q Do you recall seeing, reading or hearing anything
13 about Nate Jackson?

14 A I don't know the name. I just know there was,
15 whoever the other person was.

16 Q Do you recall seeing, reading or hearing anything
17 about the other person's case?

18 A No.

19 Q I'm going to get off this publicity issue but before
20 I do, and so listen, some of these questions I'm going to ask
21 you, they're hard questions. And if, if we were representing
22 you, wouldn't you expect us to get up here and ask hard
23 questions?

1 A Absolutely.

2 Q Nobody means to put you on the spot. And I'm going
3 to tell you that if you were asking me some of the questions
4 I'm going to be asking you, I would have a difficult time
5 answering them. So all I can ask you to do is, when you find
6 the question is a little hard to answer, just take your time,
7 ponder it a little bit and give it the best you got. Does
8 that sound fair?

9 A That sounds fair.

10 Q In order for justice to be done in this courtroom we
11 need for you to tell us that you will do your very best to
12 put aside any impressions, opinions, innuendoes, insinuations
13 that you have about this case from any source and decide it
14 solely on what happens here. Are you up to that? Can you do
15 that?

16 A Yes, I could do that.

17 Q We'll take your word at that. When you were here on
18 Tuesday, April 8th, do you recall that we were at the other
19 courtroom back there?

20 A Yes.

21 Q Where were you located in that room when the Judge
22 was giving his orientation instructions?

23 A In the front row like where the --

1 Q Up close to the Judge?

2 A Right in front of the railing in the front.

3 Q Did you hear anyone talking about this case at that
4 time at all?

5 A No.

6 Q Now, even the jurors that are selected are told to
7 keep an open mind until the case is over. And the reason for
8 that is, is if early on you listen to someone say something
9 and you form an opinion about the case, it may prevent you
10 from objectively listening to the rest of the evidence as the
11 case unfolds. Do you get where I'm coming from there?

12 A Uh-huh.

13 Q Let's say that the first witness said, I saw a car
14 drive down the street and the car was red. And you decided
15 at that time, okay, the car was red. Well, then the other
16 witnesses come and say it's blue, green or gray, you might
17 not give that testimony equal weight because you've already
18 formed an impression from the first witness. Do you got me?

19 A I know what you're saying.

20 Q So you have to keep an open mind until the whole
21 case is over. Can you do that?

22 A Right, yeah.

23 Q And you won't even be allowed to discuss it with

1 your other jurors. Are you up to that?

2 A I understand that.

3 Q Now, as you know, this is a capital case and we are
4 required to learn your views on the death penalty and life
5 imprisonment as sentencing options.

6 I have a concern about that, about asking you these
7 types of questions. Not you, any juror. I actually have a
8 concern about this particular process. And my concern is
9 this: By all of us, the Judge, the prosecutor and myself,
10 standing up here asking you questions about penalty, you
11 might get the idea in your mind, well, these fellows must
12 think I'm going to have to decide this issue of penalty or
13 they wouldn't be asking me these questions. That's my
14 concern. Do you understand my concern?

15 A Right.

16 Q Well, I want you to understand, we're asking you
17 these questions now because we have to. We're not predicting
18 we're going to get to a second phase; do you understand that?

19 A Right.

20 Q If Donna is found not guilty at the first phase what
21 happens? That's it; right?

22 A It's over.

23 Q We pack up our bags and we go home. You understand

1 you may never have to consider the question of punishment?

2 A Uh-huh.

3 Q So as odd as it sounds, we're asking you hard
4 questions about a difficult issue you may never even have to
5 consider.

6 When you were talking with Mr. Becker he asked you
7 about your questionnaire where you said the death penalty
8 would be appropriate for crimes against the elderly and the
9 young. And then he asked you if there were other situations
10 where you would consider it, I guess is the appropriate term.
11 Do you recall that?

12 A Right.

13 Q If I asked you to think about it, can you give me
14 some examples of those circumstances, other than with old
15 people and kids where you would want to --

16 A My belief is if it was purposely, purposely took the
17 life of another person for whatever reason in a, not
18 necessarily brutal but any way that it, it's taken their
19 life, why, you know, you know, not accidentally, I believe
20 that that's my real opinion on the death penalty. I put
21 children and elderly because I really believe that they
22 don't, can't protect themselves.

23 Q As you know, there are two murder, aggravated murder

1 charges here. One of them has an essential element. And
2 Mr. Becker talked to you about those, and I'll talk to you
3 more about those in a minute, called prior calculation and
4 design. And prior calculation and design, one of the last
5 jurors gave me this legal mumbo-jumbo for advanced planning.
6 It's the old premeditated murder; you've heard that?

7 A Right.

8 Q So in a -- I'm making up a case. It's not this
9 case. It's some other case. It's an aggravated murder case
10 where the jury has found that the defendant by prior
11 calculation and design premeditated, advanced planning,
12 purposely caused the death of another. Now, in that
13 situation is it your view that the death penalty is the
14 appropriate penalty? I'm not sure you and I -- I may have
15 gotten myself confused.

16 A No. My guess is they would have to show, I mean,
17 that -- I don't know that every case, I guess. I would have
18 to look at it individually, I guess, as to how, what my
19 belief and how I would interpret what I believe is a cause
20 for the death penalty type of thing. I don't know.

21 Q All right.

22 A I don't know how to answer you on that.

23 Q Well, what are your feelings about life imprisonment

1 as an alternative to the death penalty?

2 A Yeah, that's, that's my belief in it, is some cases
3 I guess call for the death penalty and some are life
4 imprisonment. And I don't know, I would have to be there, I
5 guess.

6 Q Who wants to be there; right? Did you ever hear
7 anyone tell you that, I don't want to pay for the cost of
8 housing these people, that's why I'm for the death penalty?

9 A Yeah.

10 Q Do you have any opinions on this cost issue?

11 A No.

12 Q Now, in your questionnaire you indicated that you
13 have concerns or you are in favor of capital punishment
14 provided it is fairly imposed.

15 A Uh-huh.

16 Q Do you have concerns that it is not fairly imposed?

17 A No. There's been a lot of issues that come up
18 recently like --

19 Q The state of Illinois?

20 A Yeah, that's one. Turning over death penalties.
21 I'm sure it's not a perfect world out there. Some of the
22 things that don't always go the way they're supposed to.

23 Q So you actually were exposed to some of the

1 publicity about the moratorium on the death penalty in the
2 state of Illinois?

3 A Yeah, I heard about that.

4 Q What was your opinion on that?

5 A I don't know. My opinion was, I don't know that he
6 should have overturned or put off, on hold or however you
7 call that. I think they should have continued to review the
8 cases as far as all of the people.

9 Q Have you ever seen --

10 A I guess some of them in my opinion would have
11 probably deserved the death penalty as their case was tried
12 and convicted and all that, as far as that, that one.

13 Q Did you ever see the movie True Crimes starring
14 Clint Eastwood?

15 A No.

16 Q Even in cases of purposeful premeditated murder the
17 death penalty is simply a sentencing option; do you
18 understand that?

19 A Yes, I do.

20 Q And if you were a juror in a case where there was a
21 conviction for deliberate, purposeful murder, all four
22 penalties would have to start out equally in your mind?

23 A Uh-huh.

1 Q Would they all start out equally in your mind?

2 A Yes.

3 Q Do you think you have a handle on what those
4 penalties are? It's life without parole. And you understand
5 that is exactly what it means?

6 A Life without parole.

7 Q Life without parole. There's life with parole
8 eligibility in 30 years. That's 30 full years you have to
9 serve. And life imprisonment with parole eligibility after
10 25 full years. That's 25 full years you would have to serve.

11 And the first thing that happens in the second phase
12 of a capital case is, and all of the jurors are reminded that
13 they have promised to keep an open mind and those penalties
14 should start out equally in their mind. And if that ever
15 happens on your oath as a juror they would have to start out
16 equally in your mind. Would they?

17 A Yes, they would.

18 Q And you understand that before any juror in any
19 capital case can vote for death the state of Ohio has to
20 firmly convince you by proof beyond a reasonable doubt that
21 the aggravating circumstances, the bad things, outweigh the
22 mitigating factors, positive things that can be said about
23 the person being sentenced. So it's their burden to prove to

1 you that death is the appropriate punishment.

2 If you ever have to decide the issue of punishment,
3 will you hold them to that burden?

4 A Yes, sir.

5 Q And you understand that any reasonable doubt as to
6 the appropriateness of the death penalty would require what?
7 A life sentence; right?

8 A A life sentence.

9 Q Your father was investigator for the fire marshal.
10 Was that locally?

11 A No. He did a lot of investigating all around the,
12 all around I guess southern Ohio, East Liverpool.

13 Q Do you know if he ever investigated any arson fires
14 that resulted in death?

15 A I don't know.

16 Q Have you ever donated any time, money or services to
17 a political campaign or issue?

18 A No, I haven't.

19 Q I almost laughed when I asked you that question
20 because you're the treasurer for the United --

21 A I'm a union president. They call it union chair
22 now. Union president.

23 Q For the Steelworkers?

1 A Yeah, for my local.

2 Q Have you campaigned on any public issues for
3 political candidates?

4 A No.

5 Q Do you belong to any group or organization, with the
6 exception of the Steelworkers, which is active in any
7 political matter?

8 A No.

9 Q In the last five years or so, have you signed a
10 petition on any public issue?

11 A Yeah. We, as the International will send in copies
12 that they want us to send to our representatives like, and
13 you just read what they wrote on it and send your thing in.
14 It's more or less their map to vote against NAFTA, world
15 trade organization, stuff like that.

16 Q Most of those would be trade-related issues the
17 Steelworkers are interested in?

18 A Yeah.

19 Q Do you belong to or associate with any group which
20 has crime prevention or law enforcement as a goal?

21 A No.

22 Q Have you ever considered a candidate's views on
23 capital punishment in determining whether or not you were

1 going to vote for that candidate?

2 A No.

3 Q We -- by "we" I mean society. We've got a bit of a
4 crime problem in this country. Have you ever pondered what
5 we and, again, society as a whole, might do to at least begin
6 addressing that problem?

7 A Invest more money into this country instead of
8 others.

9 Q And do what with it? Educate?

10 A Education. Inner city help for crime, because
11 that's where I think a lot of the crime flows out of.

12 Q Okay. And as Mr. Becker and you discussed, this is
13 a court of law. It's not a court of sympathy.

14 A Uh-huh.

15 Q So sympathy has no place in your deliberations.

16 A No.

17 Q So I don't want you feeling sorry for Donna here.
18 And that shouldn't affect your deliberations; right?

19 A I didn't hear you.

20 Q I don't want you to feel sorry for Donna.

21 A Right.

22 Q And feelings of sympathy for her shouldn't affect
23 your deliberations; correct?

1 A Correct.

2 Q The flip side. It's only natural to feel sympathy
3 for someone who suddenly, unexpectedly and against his will I
4 guess lost his life.

5 A Uh-huh.

6 Q So sympathy for Robert Fingerhut should play no role
7 in your deliberations.

8 A Exactly.

9 Q And Mr. Becker talked to you about some of the
10 evidence. You'll see coroner's photographs. Point blank
11 wounds. Some of these coroner's photographs may be enlarged.

12 Even though this evidence or some of it evokes an
13 emotional response from you, anger, sympathy, you have to get
14 over that emotional response to test the piece of evidence to
15 determine whether it ties Donna Roberts to this offense. Are
16 you up to that?

17 A Yes.

18 Q How do you personally feel about the rule of law
19 which requires that jurors presume a defendant innocent?

20 A You mean if we find them innocent?

21 Q No. Have you ever heard the phrase presumption of
22 innocence?

23 A Yeah.

1 Q And remember the orientation instruction on Tuesday
2 of last week, the Judge told you that Donna Roberts is
3 presumed innocent?

4 A Right.

5 Q I know some people who have problems with that rule
6 of law. Actually there's some good friends of mine. And
7 this is a free country, and all of us are entitled to our
8 opinions. But my point with my friends who feel that way is,
9 you're certainly entitled to feel that way, but if you can't
10 put that feeling aside you wouldn't make a good juror in our
11 country.

12 So what I'm asking you is, how do you feel about the
13 rule of law, the presumption of innocence which says that
14 jurors are to presume a defendant innocent?

15 A I feel that's the law. That's your right as a
16 citizen of America to be presumed innocent. That's the way
17 I've always heard the law.

18 Q It is the law. And it's our heritage. But let's
19 talk about it a little bit differently. You have two kids;
20 right?

21 A Yeah.

22 Q If one of your two kids were accused of some act of
23 wrongdoing, maybe throwing an egg, throwing a roll of toilet

1 paper, whatever it is, but it's an accusation of wrongdoing
2 that you don't think they did, you firmly, you believe in
3 your heart that they didn't do it. You would be willing to
4 change your mind if someone presented evidence to you; right?

5 A Uh-huh.

6 Q But they would have to present evidence to you that
7 your child had done that; correct?

8 A Right.

9 Q Well, does that sound like you're presuming your
10 children innocent?

11 A Well, yeah, presume them innocent.

12 Q Right. And in the case with your children, the
13 evidence that's presented to you, you wouldn't just accept it
14 willy-nilly, would you? You would look at it with a critical
15 eye to make sure that it amounts to what it's supposed to
16 amount to?

17 A Right.

18 Q And will you do that in this trial?

19 A Yes, I would.

20 Q Do you need water or anything?

21 A No, I'm fine.

22 Q The last gentleman that was sitting up there was
23 literally gripped to his coat the entire time he was there.

1 You seem a little bit more relaxed.

2 Because of the presumption of innocence the State
3 has the burden of proof. Now it's time for these guys to put
4 up or shut up. They've leveled these accusations, now they
5 have to prove them. And it will be your responsibility to
6 hold them to their burden of proof. Will you do that?

7 A Yes.

8 Q I doubt that it will happen, but Juhasz and I, we
9 can sit over there and just sit on our hands and not say a
10 word. And if they don't prove their case they don't prove
11 their case. You understand that?

12 A Uh-huh.

13 Q You understand that Donna is on trial for being, for
14 murder, not for being a woman of loose moral character.
15 While the State may prove that Donna was a loose woman, the
16 State's burden in this case is to prove that she
17 intentionally participated in the murder of Robert Fingerhut.
18 Will you hold them to that burden?

19 A Yes, I will.

20 Q The two aggravating murder charges, they have
21 essential elements. Mr. Becker discussed a few of them with
22 you. The Judge will go through them with you in detail, and
23 he'll define them for you.

1 But an essential element of both of the aggravated
2 murder charges is that the Defendant acted purposely. And
3 the Judge will tell you that purpose is the same as intent.
4 Intent: A person acts purposely if it is his specific intent
5 to cause a specific result.

6 Would you agree with me that the facts and
7 circumstances surrounding an event or an act can shed light
8 on the actor's intent?

9 A Uh-huh.

10 Q For instance, if I engage in some act of wrongdoing,
11 is it more likely for me to try to cover my tracks or am I
12 going to leave a paper trail?

13 A You're going to try to cover your tracks.

14 Q Am I going to do it in secret at night or in the
15 open, in the light of day?

16 A I guess that would depend.

17 Q That would probably depend. Will you look at the
18 facts and circumstances of what you hear here to determine
19 intent?

20 A Yeah.

21 Q The aggravated burglary charge has an essential
22 element of trespass, and that is to enter or remain on the
23 land of another. Will you hold the State to proving beyond a

1 reasonable doubt that essential element?

2 A Yes.

3 Q And the aggravated robbery charge, that's in
4 committing or attempting to commit a theft offense -- someone
5 had a gun. So they have to prove a theft offense and a theft
6 offense necessarily involves the taking or an attempt to take
7 property from someone. Will you hold the State to its burden
8 of proving that?

9 A Yes.

10 Q Donna does not have to testify in this case. And if
11 she chose not to testify you couldn't consider that for any
12 purpose; you understand that?

13 A Right.

14 Q In our every day lives it's only natural to want to
15 hear both sides of a dispute. Like when there's an argument
16 between your kids, all right, the first thing you say is, you
17 guys tell me both sides of the story.

18 In this case your oath as a juror may require that
19 you put aside that natural inclination. Do you think you
20 could do that?

21 A Yeah.

22 Q How would you feel if Donna elected not to testify?

23 A I would feel that's probably in her best defense. I

1 would think that would the reason for it.

2 Q You understand that that is her right to make that
3 decision?

4 A Right.

5 Q Now, the flip side of that, if she does testify
6 she's a witness just like any other witness, so you should
7 use the same rules or the same standards for determining her
8 credibility or believability that you use for other
9 witnesses. Got me there?

10 A Right.

11 Q But let's be fair about this. She is the Defendant
12 in this case, isn't she?

13 A Yeah.

14 Q So she has an interest or a stake in the outcome.
15 And that's something you would want to consider; right?

16 A Right.

17 Q And I think that's something the Judge is going to
18 tell you you should consider. My point, though, is, if you
19 consider that with her, you should also consider interest or
20 stake in the outcome with every other witness that testifies
21 if you find that any other witness has an interest or stake
22 in the outcome; does that sound fair to you?

23 A Right.

1 Q So you would not reject the testimony out of hand.
2 You would listen to it and judge it like you would other
3 testimony?

4 A Right.

5 Q Now, the indictment is a piece of paperwork. All it
6 does is informs Donna of the nature of the allegations
7 leveled against her by the State.

8 The Judge has already told you that it's not
9 evidence. And throughout this trial it's going to be
10 referred to and it's going to be read. Nowhere along that
11 process is it magically transformed into evidence; you
12 understand that?

13 A Right.

14 Q Let me tell you why it's not evidence. Mr. Becker
15 dealt with it briefly. I'll try to be quick. The Judge
16 wasn't there. Donna wasn't there. Her lawyers weren't
17 there. No one tested the evidence. And the issue before the
18 grand jury is not guilt or innocence, it's only should
19 someone stand trial. So you understand why it's not
20 evidence?

21 A Right.

22 Q The Judge is going to tell you that one of your big
23 job responsibilities is to determine the credibility of the

1 witnesses. You can believe all of what someone says, none of
2 what someone says or part of what someone says. He's going
3 to give factors. Will you take those factors and apply them
4 to everyone that testifies?

5 A Yes.

6 Q He's also going to tell you that you can use one
7 factor that's called the test of truthfulness that you use in
8 your every day life.

9 At work, you've got to decide sometimes if one of
10 your union members is giving you the straight up or trying to
11 hoodwink you, don't you?

12 A Right.

13 Q And over the years you've developed a sixth sense or
14 an intuitive sense for aiding you in that process?

15 A Right.

16 Q We don't want you to leave that sixth sense out
17 there. We want you to bring it in here and apply it to
18 everyone that testifies. Will you do that?

19 A Yes.

20 Q Proof beyond a reasonable doubt is based on reason
21 and common sense. It requires that you be firmly convinced
22 of the allegations and is proof of such character that you
23 would be willing to rely and act upon it in the most

1 important of your own affairs.

2 Firmly convinced, rely and act upon in the most
3 important of your own affairs. You've made important
4 decisions in your life, haven't you?

5 A Yes, I have.

6 Q You own a home?

7 A Yes, I do.

8 Q That was a big decision, wasn't it?

9 A Yeah.

10 Q When some people make a decision like that, either
11 on paper or in their mind's eye, they do a list. They put
12 the good things, the positive over here, the bad things, the
13 negatives over here and they list them all out. Love the
14 house. Enough bedrooms. Good school.

15 Bad things: It's old. I don't know about the
16 structural stability. I don't know about the plumbing.
17 Maybe there's termites. And I don't know about the interest
18 rate. If you're like me you try to scratch off those
19 negatives.

20 A Right.

21 Q So you call a housing inspector. He comes and says
22 you don't have termites. You call an engineer, he says, this
23 house is solid. But you go to the bank and no matter how

1 hard you think about it, you cannot get clear in your own
2 mind that interest rates aren't going to go down or that you
3 can afford the house payment. That one negative still
4 remains reasonable on that list. Do you see me?

5 A Right.

6 Q If that happens you can't say beyond a reasonable
7 doubt that that decision is the best thing for you?

8 A Right. I understand what you're saying.

9 Q It's the same here. Will you hold the State to that
10 burden?

11 A Yes, I will.

12 Q And Mr. Becker talked to you about circumstantial
13 evidence; remember that?

14 A Right.

15 Q It's evidence where they prove something by direct
16 evidence. You're asked to make a leap in logic. Well, if
17 it's a leap in logic that leap better be logical; right?

18 A Right.

19 Q Will you test all those leaps to determine if
20 they're logical?

21 A Yes.

22 Q Let's go back to your kids. I know I'm going fast.
23 I'm sorry.

1 If your kids in that situation where they were
2 accused of some wrongdoing, if circumstantial evidence was
3 presented to you do you think you would look for other
4 inferences that maybe pointed in other directions?

5 A Right.

6 Q And will you look for other inferences in this case?

7 A Yes, I will.

8 Q And would you agree with me that circumstantial
9 evidence is like a chain, it's only as strong as its weakest
10 link?

11 A Right.

12 Q And will you look for weak links?

13 A Yeah.

14 Q If you're anything like me, on Sunday morning we
15 sometimes like our Sunday paper. And I smoke way too much.
16 So at about 8:00 o'clock in the morning I've got a cigarette
17 in one hand, a cup of coffee in the other hand. I go to the
18 upstairs window, because I don't want to open the door and
19 get cold unless it's necessary. It's obviously winter. And
20 I'm looking for the footprints in the snow. I see footprints
21 from the house next door to my door to the house on the other
22 side. Well, I infer that it's the paperboy and that's my
23 Sunday paper. That seems reasonable, doesn't it?

1 A Uh-huh.

2 Q Until I go to the door, I open the door expecting my
3 Sunday paper and there's my Giant Eagle coupons. You have to
4 test all inferences that you're asked to make. And will you
5 do that during this trial?

6 A Yeah.

7 Q Now that I've taken a lot of your time and asked you
8 some rather hard questions, is there anything that's popped
9 into your mind that you would like to discuss with any of us?

10 A No.

11 Q I thank you for your time and attention, sir.

12 THE COURT: Gentlemen approach, please.

13 (Whereupon, a discussion was held off the
14 record.)

15 THE COURT: Mr. Lanam, you're going to be
16 in the poll from which this jury will be selected. You
17 should call back this Friday after 4:30 to see what
18 instructions we have for you. This is going a little bit
19 slower than we anticipated. It maybe over into the following
20 week before we actually get the jury in here to be picked.
21 But we're trying.

22 But again, I remind you not to read anything,
23 discuss anything about the case. And we thank you for your

1 participation. So call that number after 4:30 Friday night.

2 A All right.

3 THE COURT: Thank you, sir. Let's take a
4 ten minute break, folks, and we'll get this last lady in
5 here.

6 (Whereupon, a recess was taken.)

7 * * *

8 WHEREUPON,

9 NANCY J. MARSH-McGARRY

10 being first duly sworn, according to law, was examined and
11 testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Good afternoon. Ma'am, you read the handout that
15 was given to you?

16 A I have a few questions.

17 Q That should bring you up to speed pretty much with
18 the details. But this case, as you know, involves two counts
19 of aggravated murder with specifications.

20 In Ohio, just because a person murders someone does
21 not necessarily mean that they face the death penalty.

22 A Which seems to me the opposite.

23 Q How is that?

1 A Well, why wouldn't it be that that alone would be
2 enough? I mean, if you're going to believe that death is the
3 way to go, then why wouldn't just murder be enough? Why does
4 it have to be a bundled robbery?

5 Q The law in Ohio is not an eye for an eye. The
6 Legislature has seen fit to say that if you murder the
7 Governor under an aggravated murder circumstance, that that
8 qualifies you for the death penalty. If you murder a
9 policeman. And as in this case, if you commit what we used
10 to call the old felony murder doctrine, if you're in the
11 commission of a robbery, you have a gun, that's a felony, and
12 you end up shooting somebody as a result of that robbery,
13 intentionally pre-planned or not, the mere fact you're
14 committing another felony and you do murder at that time,
15 that qualifies you for the death penalty. You'll have to
16 listen to the instructions on what does or does not. But the
17 point is that all murderers do not face the death penalty.

18 A So unintentional is worse than intentional under the
19 penalty?

20 Q No. To make it aggravated robbery there has to be a
21 prior calculation and design.

22 A But not of murder? Just of the robbery you're
23 saying?

1 Q No. Let me start it this way. At the proper time
2 we'll give you all the if, ands and don'ts and buts.

3 The point you have to take into consideration right
4 now is that Miss Roberts is charged with aggravated murder
5 with specifications. That means that the state of Ohio has
6 to go through a trial on the aggravated murder portion with
7 the specifications.

8 Now, if the State is able to prove all elements
9 beyond a reasonable doubt, then this jury would return a
10 finding of guilty.

11 If they failed to do that, then the jury would
12 properly return a verdict of not guilty. If the jury found
13 beyond a reasonable doubt that Miss Roberts was guilty of all
14 elements of the crime of aggravated murder with the
15 specifications, then you would go to a second phase.

16 At that second phase the burden is always on the
17 State. They would have to prove beyond a reasonable doubt
18 that the aggravating circumstances, that is the reasons why
19 the jury should consider and impose the death penalty,
20 outweigh any mitigating factors.

21 Mitigating factors would be reasons why the jury
22 should temper that decision and not impose the death penalty.

23 Now, you have, we've had people on both sides of the

1 spectrum here already. Some believe that anybody who commits
2 murder should lose their life. That's not the law of Ohio.
3 Such a person could not be fair to the Defendant because that
4 isn't the law.

5 Other people could never see themselves engaging in
6 any activity where they had to make a decision concerning a
7 person's life. That person couldn't, that type of person
8 could not give the State a fair trial. Because the State in
9 this case is entitled to ask for the death penalty.

10 Now everybody we pick on this jury is going to have
11 some opinion on the death penalty, some more in favor, some
12 less. That's natural. But the assurance that must be given
13 to each side here is that whoever sits on this jury is able
14 to set aside their own view and follow what the law is.
15 That's a pretty big thing to ask if people have very fixed
16 opinions. But I suspect most people don't have that strong
17 an opinion one way or the other.

18 All that they're asking you to do is to state what
19 your opinion is. Whatever your opinion is, you're entitled
20 to it. We will respect it. But they have to know of each
21 juror whether or not they would be able to consider the death
22 penalty if the situation arises -- it may not -- and if
23 they're able to do it according to the dictates of the law.

1 The other area of inquiry will be concerning any
2 pretrial publicity you may have been exposed to. A good many
3 of the people here, some had really, I don't think knew
4 anything about the case. Others have read something about
5 it. Some more than others. And we can't avoid that. But
6 the question is, have you read something that has fixed your
7 opinion to the point where you're not able to set that aside
8 and listen to the evidence and let the evidence be the
9 determining factor of guilt or innocence? Okay?

10 A Am I answering you or them?

11 Q Do you have a question?

12 A No.

13 Q They're going to ask you questions. Mr. Bailey for
14 the prosecution or Mr. Becker, which is it?

15 MR. BAILEY: Yes, Your Honor. Thanks.

16 EXAMINATION

17 BY MR. BAILEY:

18 Q Good afternoon, Mrs. Marsh-McGarry. Your name is
19 hyphenated?

20 A Yeah, but you can just use Marsh.

21 Q Is it Mrs. or Miss?

22 A Ms. But Nancy would be okay just to eliminate this.

23 Q I don't want to be presumptuous. My name is Ken

1 Bailey, as you know. I'm an assistant prosecutor from the
2 Trumbull County Prosecutor's Office. And as I promised you
3 the other week, I'm joined by Chris Becker in our office
4 who's also an assistant prosecutor. And the two of us are
5 responsible for prosecuting this particular case. Okay?

6 And as the Judge said, the reason we ask these
7 questions of the jurors is we want to make sure the folks who
8 are selected to sit as jurors can be fair and impartial to
9 both sides, both to the Defendant and to the people of the
10 State. We're not asking these questions because we're snoopy
11 and we like to pry into your opinions and your background,
12 your experiences. Okay. So that's, that's why we're asking
13 this. Also, there aren't any right answers. There aren't
14 any wrong answers. They're only open, candid answers.

15 Another thing I want to point out is, if we run into
16 each other out in the hall or elevator, restaurant or
17 something, we're not allowed to have any communication with
18 you during the course of the proceedings. And if this case
19 goes into two phases, that would encompass both phases.
20 Okay. And we're not trying to snub you or be antisocial.
21 It's just that under our rules of conduct we would end up in
22 big trouble if we started talking to you other than saying
23 good morning or good afternoon. And it could cause a

1 mistrrial. So we don't want to do it all over again.

2 A Furthermore, you don't know me so there would be no
3 reason for you to talk to me.

4 Q Right. I mean, unless to say good morning or
5 something.

6 A Yes.

7 Q If you do have any questions that come up during
8 these proceedings direct them to the bailiff. She's not here
9 now but she'll be here, Laurie brown, or Richelle or to the
10 Judge. If you have any questions during -- this is sort of a
11 give and take right now. I notice you were asking some
12 questions of the Judge. And the same thing holds true with
13 us. If you have any questions as to what we're asking or
14 what we're doing, feel free to ask them because this is the
15 only chance you get until the case is all over. Okay?

16 The Judge said that we're going to be directing our
17 questions to two major areas at first. The first question is
18 pretrial publicity. And the second area deals with your view
19 on the death penalty.

20 Before we get into that, let me ask you about two
21 different things that you had brought up on your
22 questionnaire. You know Jerry Ingram's brother. Is it Tim?

23 A Yeah.

1 Q How do you know him?

2 A Just around.

3 Q Pardon?

4 A Just from being around, I guess, north side.

5 Q You mean you grew up together?

6 A No, no, no. I think I indicated acquaintances would
7 be the --

8 Q I mean, you see each other at school functions or
9 what?

10 A No.

11 Q How do you, how are you acquaintances?

12 A Probably through family friends. Mutual friends.

13 Q Has he ever discussed Attorney Ingram's cases?

14 A No.

15 Q There's nothing about that relationship that would
16 affect your ability to be fair and impartial to both sides?

17 A No.

18 Q Now there --

19 A I thought I had, I just thought I had to disclose
20 that.

21 Q You mentioned sequestration might be a problem. You
22 have a 12-year old son; right?

23 A Yeah.

1 Q And your, because of your husband's job -- he's been
2 in the fire department over there as a battalion chief for
3 how long, approximately?

4 A Seven years maybe.

5 Q Now, he's on call for what, several days at a time?

6 A He works 24 on and 48 off.

7 Q If you were to be sequestered, let's say this case
8 went through a second phase. Well --

9 A I'm thinking now it's going to be like June; right?
10 I mean, when is this going to get underway?

11 Q This is April, May. I hope it would be in May. I
12 really don't want to be here in June.

13 A I was just thinking about school timing so --

14 Q Okay. Let's say that we start this trial in two
15 weeks, which would be like the beginning of May, May 5th or
16 something like that. I'm just guessing.

17 A Right.

18 Q And the case would take a week or a week and a half
19 or up to two weeks maybe. At the conclusion of the first
20 phase the jury would be sequestered. And you would take
21 that, I take it you would take as long as it would take to
22 deliberate; right? You wouldn't rush your deliberations
23 because you have a son at home?

1 A Uh-huh.

2 Q When we say you would be sequestered, some juries
3 take a couple of hours. Some juries take up to a week in
4 deliberating. If you and the other jurors found the
5 Defendant guilty of aggravated murder with one or more of
6 these special findings of fact, specifications, then we would
7 have to go into a second phase. And that would generally
8 take anywhere from one to three days, and then you would be
9 sequestered again. During that second sequestration that
10 again could take anywhere from a couple of hours to maybe a
11 week.

12 A Let me go back. There's sequestering after the
13 first phase --

14 Q And the end of the second phase.

15 A Considering the mitigation and aggravation?

16 Q What the punishment would be. The first phase deals
17 with guilt or not guilty.

18 A Then is the aggravation or mitigation. Are you
19 saying --

20 Q If she's found guilty of aggravated murder and one
21 or more of these specifications, then we would go to a second
22 phase and you would end up getting sequestered.

23 A During the second phase, and then furthermore into

1 the sentencing; is that what you're saying? Or the
2 sentencing is just part of the mitigation?

3 Q Well, that --

4 A I've got it.

5 Q We call it a mitigation hearing. And really it's a
6 second phase. But you would only, you would have to
7 deliberate again at the end of that phase to see if we prove
8 -- you've got to do a balancing test. You have to decide if
9 these aggravating circumstances, the special findings of fact
10 that would make her eligible for the death penalty, outweigh
11 any mitigating factors that are presented. Okay.

12 If you and the other jurors find that the
13 aggravating circumstance or circumstances outweigh these
14 mitigating factors, and we don't know what these are at this
15 point because it's not relevant at this point. But there are
16 things that can be brought out in the Defendant's favor that
17 would mitigate against the death penalty as a punishment.
18 But if you find the aggravating circumstances outweighs the
19 mitigating factors then you have to come back with a death
20 penalty verdict beyond a reasonable doubt.

21 MR. INGRAM: Objection.

22 THE COURT: What is your objection?

23 MR. INGRAM: He did not state the burden

1 of proof. He just said if they find that the aggravating
2 circumstances outweigh the mitigating factors.

3 MR. BAILEY: I think I added beyond a
4 reasonable doubt at the end of that.

5 MR. INGRAM: That's why I objected. I
6 don't think he did.

7 THE COURT: It's beyond a reasonable
8 doubt.

9 Q If we prove beyond a reasonable doubt that the
10 aggravated circumstance or circumstances outweigh the
11 mitigating factors, then you and the other jurors have to
12 come back with a death penalty verdict. And you would have
13 to be, during that second phase when you're making that
14 determination you would be sequestered again. Okay. That's
15 two times you would be sequestered.

16 A That's what I was --

17 Q Would that cause an undue hardship for you? I mean,
18 would the fact that your husband's working and he's on for 24
19 hours and off for 48, I mean, if you had to go for three or
20 four days in your deliberations, would that affect your
21 ability to concentrate on the evidence and deliberate and
22 give both sides a fair shake, or would you find yourself
23 rushing to judgment?

1 A I don't know.

2 Q Because that could happen twice. And the reason I
3 ask it --

4 A I know you're pinning it on my son. I don't mean to
5 be glib but I just think that being sequestered period is
6 going to be stressful. That just sounds like a stressful
7 situation.

8 Q It may or may not be. I mean, of course -- have you
9 ever seen --

10 A When you're cut off from your normal life. And I
11 know that must sound trivial.

12 Q Some people find it stressful. Some people find it
13 sort of a break away from their regular family functions. It
14 depends on your family life, I suppose, and what you have to
15 do every day. If you've got a million students that are,
16 that you've got to teach and prepare, grade tests and stuff
17 like that it would be a different type of thing that you
18 could do.

19 A And again, not to be glib or crass, it would be my
20 work as much as my kid that I would be anxious about, I
21 think. Would that keep me from deliberating? I mean, if
22 that's --

23 Q Would it rush your deliberations? Do you think it

1 would affect your ability to deliberate?

2 A I don't know. I don't know. I'm --

3 Q The reason I'm sort of pushing you on this --

4 A I know.

5 Q Because let's say you're selected to sit on the jury
6 and we get down to that point and we're at deliberations.
7 And let's say it's the first set of deliberations and you
8 say, gosh, I think the State has proved its case beyond a
9 reasonable doubt that, that she's guilty of the crimes
10 charged of aggravated murder and a specification, but we're
11 deliberating here. There may be hundreds of exhibits to go
12 through. There may be a lot of letters to read. There may
13 be, you know, 100, 200 letters to read. It's going to take a
14 lot of time. We want to make sure we read through all this
15 stuff to make sure we've considered all of the evidence. And
16 I know my husband was just off and now he's going to be
17 working tomorrow, and we're going to be here. And I know my
18 12-year old is going to be home. Do you have anybody who
19 could watch him or take care of him for a number of days?

20 A Well, we would make arrangements.

21 Q But would it affect you, you would be so concerned
22 that it would affect you? Because if you got in there and
23 you say, gosh, I've got to leave, I can't stay. I'm

1 concerned. You know, it's flu season or something and he's
2 got a bad cold or something.

3 A I don't know. I don't --

4 Q Let's say you were sequestered once and then you got
5 to come back the following week and you're in a situation
6 where you're getting sequestered a second time.

7 A And I had time off in between?

8 Q For maybe a couple of days. And then all of a
9 sudden you're faced with a second sequestration. And you,
10 and you, and it's going to take some more time to deliberate
11 on the second.

12 A I don't think that, I don't think there would be any
13 difference between the first or second if there was time in
14 between. I think it's going to be the duration of which --

15 Q Let's say with the two sequesterations it could take
16 a total of six days or more.

17 A Six days doesn't seem so bad.

18 Q Okay.

19 A I don't know. I don't --

20 Q You're the only one who knows. You're the only --

21 A Right. And I don't know because I haven't done
22 that, so I don't know what it's going to be. How nervous
23 would I be being away? I've never been away under that

1 I-can't-get-out circumstance.

2 Q Let's talk about publicity here for a minute,
3 pretrial publicity. Now, I noticed in your questionnaire
4 that you read the Vindicator every day. And you recollect
5 something about two other men being involved and one of them
6 is dead.

7 A I think.

8 Q When you filled out the questionnaire. And you also
9 watch the nightly news on the three local stations 21, 27
10 and 33. Other than that, you understand the charge here.
11 The Defendant is charged with complicity, being a
12 complicitor, with helping or aiding and abetting or
13 soliciting or procuring another person, a fellow by the name
14 of Nate Jackson, in planning the murder of her ex-husband for
15 insurance money and the theft of a car in the course of
16 aggravated burglary and aggravated robbery. And that a
17 working gun was used, a firearm.

18 Now, does any of that, those charges ring a bell
19 with what you heard in the news?

20 A Yes, but not that I had recalled.

21 Q Okay. Now, the Judge admonishes you that you can't
22 read the newspapers while this is going on or listen to the
23 news reports. You have to turn off your TV or walk out of

1 the room or something if it's going on. And if you read the
2 paper you can have your husband save the newspapers for you
3 and read it at the end of the case.

4 But as you look around the courtroom today, we have
5 a reporter in the courtroom today. That's unusual. But
6 you'll notice he's been here for awhile. And he may be here
7 for a couple more minutes, or he may stay the rest of the
8 afternoon. But then, again, he may not be. He may
9 disappear. And reporters, generally when they come in
10 they're here for a couple minutes, the TV cameras, except
11 they can't film the jurors, but they may be here for three to
12 five minutes. They may film something that was going on and
13 try to do a feature on it, on the trial based on what's
14 happened while they've been here.

15 Now, you'll notice that they won't have been here
16 for everything that was asked and answered before they got
17 here, or everything that was asked and answered after they
18 left here. And if you sat on this jury and you had the
19 papers saved, or you taped the TV coverage, you might say,
20 gosh, you know, I sat through Judge Stuard's courtroom
21 through that entire trial, I remember the testimony. And
22 what I read in the paper is slanted. It didn't happen that
23 way. They missed all this stuff that happened before. They

1 missed the impact of the questions and answers afterwards.
2 And it's a distorted view. Not intentionally, but because of
3 the nature of the business they have to rush in to print to
4 get it on the air. That's why the Judge tells you that
5 you're not to read the papers or watch TV stations.

6 Because of that you understand it's important that
7 you get all your information, it's like starting a class with
8 a fresh or a blank slate, and whatever is going to be written
9 on that slate is going to be written here in this courtroom
10 from the testimony of the witnesses and the exhibits that
11 come in and the instructions from the Judge.

12 A I'm allowed to sensor myself and not read about the
13 case; right? I'm allowed to read other things?

14 Q Sure. But if there's an article in there you have
15 to put that article aside.

16 A Yes.

17 Q Right. No, we're not telling you not to read
18 anything in the paper, like about Iraq or anything else.
19 Just anything dealing with this case you have to push aside.
20 Do you think you could do that?

21 A Yeah.

22 Q It may well be that during the course of the
23 proceedings you may hear some testimony that may jog a bell

1 and you may say, gosh, I remember this and this and this from
2 before. Can you set that aside?

3 A (Witness nods head affirmatively.)

4 Q Now let's get to this issue of the death penalty as
5 a possible punishment here. When was the first time you
6 learned that this was a potential death penalty case?

7 A I don't remember exactly.

8 Q Was it when you first came into court a couple weeks
9 ago?

10 A No. Just before that.

11 Q Any idea? Well, was it through the news media or
12 what? Through conversation with other people?

13 A Yeah.

14 Q Conversations?

15 A Yeah.

16 Q At school or at home or where?

17 A I think socially.

18 Q Talking with friends?

19 A Yeah. When I said I was being called for jury duty.

20 Q And which friends? I mean, neighbors or family
21 or --

22 A I guess it was -- no, it was just social friends.
23 It wasn't school. I teach in Portage County.

1 Q I used to prosecute there years ago.

2 A So they don't know anything about over here. And I
3 really don't follow Trumbull County news all that carefully.
4 So when I said, when I said I was being called for jury, they
5 said, oh, I'll bet it's that case.

6 Q And did they mention a name? Like did they mention
7 the name Fingerhut?

8 A No.

9 Q Did they mention any names?

10 A They said they thought this was, that was probably
11 going to be that case. And I didn't, maybe the names were
12 said but I didn't pay attention to the names because I didn't
13 know.

14 Q Did they tell you anything about what it was about?

15 A Nothing more than what I kind of gleaned from the
16 news, not very carefully. What I said on that paper, I knew
17 it kind of had -- I mean that other name wasn't familiar to
18 me actually.

19 Q Which name?

20 A Nate.

21 Q Nate Jackson?

22 A Yeah.

23 Q Now, you have taken some stance on the death penalty

1 as a possible punishment; right? I take it you're, at least
2 reading your questionnaire you're pretty much against it?

3 A Yeah. And the way it's explained here it makes even
4 less sense to me.

5 Q You mean in what? In the --

6 A What I'm trying to say that just murder is, has to
7 have the specifications with it, but just murder isn't,
8 that's --

9 Q You understand that the Legislature writes the
10 crimes. They're responsible for setting out --

11 A I'm just trying to understand what the theory is. I
12 mean, when you say it's not an eye for an eye, then on what
13 possible grounds would it be based?

14 Q Well, there are different theories. I think you
15 would agree there are different theories for punishment. One
16 can be punishment. One can be deterrence. One can be
17 rehabilitation.

18 A Well, and as I suggested, if it's about
19 rehabilitation certainly death is out. And it's, for
20 deterrence it's not working.

21 THE COURT: Let me interject something
22 here. We live in a republic, not a Democracy, so we delegate
23 to the Legislature the right. Ohio, from the very beginning,

1 did not adopt common law crimes. If it wasn't written by the
2 Legislature as a crime it was not a crime. And through their
3 infinite wisdom they saw fit some years ago to say that we
4 shouldn't kill our Governor. We shouldn't kill our
5 policemen. We shouldn't allow felony murders, and a few
6 other things. And those constitute the death penalty cases.
7 All other murders get life in prison. But there's no rhyme
8 nor rationale to it except what the Legislature saw fit to
9 impose.

10 Q So I take it you've expressed a view against the
11 death penalty over the years?

12 A (Witness nods head affirmatively.)

13 Q You're indicating yes?

14 A Yeah.

15 Q Is that a pretty strong yes or kind of a weak yes?

16 A Well, as I thought about it, the more I thought, I
17 mean, in recent years the more I thought about it as a, as a
18 reflection of the culture I guess.

19 Q So your view against the death penalty has gotten
20 stronger over the last several years?

21 A Yeah.

22 Q And in reading your questionnaire, if I remember,
23 you felt that the death penalty was statistically applied

1 unfairly based on race and economic status?

2 A Well, I think when I look around the country and
3 what I do read about it, yes, it doesn't seem to be --

4 Q And I take it you've done a lot of reading and a lot
5 of --

6 A Not a lot.

7 Q -- considering?

8 A I do a lot of considering.

9 Q A lot of philosophizing to reach that decision;
10 right? I mean, it's not a view that you hold lightly?

11 A It's not something that I would consider lightly.

12 Q Which? Your viewpoint?

13 A The consideration of it. I mean, I'm still taking
14 in information about it but --

15 Q But this is a heartfelt belief; right? You're
16 against the death penalty? I mean, I take it --

17 A Yeah. I just don't think it's working. I don't
18 know what it's supposed to be doing.

19 Q Well, philosophically --

20 A If it's not an eye for an eye, if that's not what it
21 is --

22 Q Well, it could be.

23 A When you rule out the other possibilities of what

1 it's supposed to do and they're not doing it, then what's it
2 come down to?

3 Q It could be, would you agree that society has a
4 right to impose punishment in the most severe cases, for the
5 most severe crimes?

6 A Uh-huh.

7 Q Now, if you were, if you had a say in the
8 Legislature, if you could design the criminal justice system
9 in this state, would you include the death penalty as a
10 possible punishment?

11 A No.

12 Q Fair enough. And would you agree it's important as
13 part of our American system of government and of justice to
14 have people with all different types of viewpoints partake in
15 that system?

16 A Do I think it's important that --

17 Q All the citizens with different viewpoints --

18 A Participate in our --

19 Q -- participate in our system of government, right,
20 in making the determinations?

21 A Yeah, all 30 percent who vote.

22 Q No. I mean everybody.

23 A Well, we ought to.

1 Q We ought to. Okay. Now, how long have you held
2 this view about capital punishment?

3 A I don't know.

4 Q I mean, from when you were a kid in high school?

5 A No.

6 Q When did it start to develop?

7 A Maybe, maybe in college. Probably when
8 conversations would, you know, when that kind of discussion
9 would be part of the evening's entertainment I suppose,
10 talking about this sort of issue.

11 Q Which issue?

12 A Death penalty.

13 Q This sort of issue?

14 A Yeah. Things of philosophical concerns.

15 Q It's not a religious belief, I take it; right?
16 Because you've chosen not to participate in a formal
17 religion?

18 A No.

19 Q What about an eastern philosophy?

20 A No.

21 Q Do you follow any eastern philosophies?

22 A No. I'm not schooled in anything like that, no.

23 Q Well, if you wouldn't include the death penalty as a

1 possible punishment, do you think you could partake or
2 participate in making a decision involving the death penalty
3 as a possible punishment?

4 A Obviously I've been thinking about it since I got --

5 Q The questionnaire?

6 A Well, that. And sitting in court hearing all of
7 this when I got the first hint that that's what this was
8 about and why there's going to be such a process of
9 selection, I don't know. I don't know if I could sit here
10 and do that.

11 Q Okay. Fair enough. That's why we go through this
12 process. I take it you agree it's important that both sides
13 in this trial get a fair shake, both the Defendant --

14 A Absolutely.

15 Q You understand there are some folks who can come in
16 here and say, well, if she's found guilty of aggravated
17 murder with one or more of these specifications, I believe
18 that she should automatically get the death penalty, do you
19 understand there are people who believe that?

20 A Yes. Because -- and if that's the law, I mean.

21 Q No, that's not the law. It's not an automatic --

22 A Not automatic.

23 Q But you agree, it wouldn't be fair to have somebody

1 sitting on this jury who would automatically impose the death
2 penalty if they found her guilty in the first phase; right?

3 A Right.

4 Q It wouldn't be fair to the Defendant?

5 A Right.

6 Q And by the same token, if we, the State is also
7 allowed to have a fair trial, and have people fairly consider
8 the punishments in this case. And it's because we have
9 people with all different types of viewpoints in this
10 country. It's important to know, and you're the only one who
11 really knows how you feel, whether somebody can actually come
12 back with a death penalty verdict in an appropriate case.
13 Okay. So you would agree with that, it's important to know?

14 A Yes. I understand this process.

15 Q So you think your opposition to the death penalty,
16 can you picture any situation where the death penalty would
17 be appropriate?

18 A I tried to do that, too, and I just can't.

19 Q That's fair enough. There are a lot of people in
20 this country who feel that way. It's part of our system.

21 A I mean, I want to be --

22 Q Fair and honest; right?

23 A Right.

1 Q And do you think that knowing that if you and the
2 other jurors -- well, let's say you got the first phase of
3 the case. The first phase deals with guilt or non guilt.
4 And these crimes, the Judge is going to instruct you as to
5 what these crimes are and what the elements are, the
6 essential component parts of the crimes, like the ingredients
7 in a recipe. If we proved all those elements of the crime by
8 proof beyond a reasonable doubt so that you're firmly
9 convinced of the truth of the charge to a moral certainty,
10 moral certainty using your reason and your common sense,
11 let's say we convince you of that, that she's guilty of
12 aggravated murder and one or more of these specifications of
13 aggravating circumstances, that the aggravated murder
14 occurred using prior calculation and design, and that it was
15 during the course of an aggravated burglary, and that it,
16 using prior calculation and design, it was part of an
17 aggravated robbery. Okay. There are two possible
18 specifications, special findings.

19 Let's say we convince you of that beyond a
20 reasonable doubt, do you think that your opposition to the
21 death penalty is such that it would substantially affect your
22 ability to sign a verdict form finding her guilty in the
23 first phase knowing that if you did so it would make her

1 eligible for the death penalty in the second phase?

2 A Do you know what I'm honestly thinking right now?
3 That I could, I could find guilty but that I would, I'm sure
4 that I could get into that room and convince them not to
5 sentence to death.

6 Q Okay. So what you're saying is, you think you would
7 be able to sign a guilty verdict in the first phase, but
8 let's say we get --

9 A Knowing that I have other options and I have to
10 convince them too.

11 Q Okay. So if I understand what you're saying, you
12 could participate in the first phase okay, right, without
13 being unduly influenced by your anti-death penalty feeling,
14 you could return a guilty verdict in the first phase?

15 A Because I absolutely have those other choices,
16 right?

17 Q Well, that's the thing. If you get to the second
18 phase and then -- in the second phase that deals with the
19 issue of punishment, what's the appropriate punishment for
20 this crime for this Defendant, and not guilty or non guilty
21 because you've already decided guilt. So in the second phase
22 the issues would be these aggravating circumstance or
23 circumstances on one side of the scale.

1 A But there's none of them that eliminate the other
2 possibilities.

3 Q Well --

4 A Just imprisonment.

5 Q If you find, you and the other jurors find in this
6 weighing process that the aggravating circumstance or
7 circumstances outweigh beyond any reasonable doubt any
8 mitigating factors presented, then you must return a death
9 penalty verdict under the law.

10 A You know what else? I can't imagine that there
11 aren't mitigating circumstances.

12 Q Well, but then again it's a question of weight.

13 A Give me an example of weight.

14 Q How much do these things weigh? It's a balancing
15 test. So it's entirely up to you and the other jurors how
16 much weight to give to these mitigating factors and the
17 aggravating circumstances.

18 You can decide it has a whole lot of weight or it
19 might weigh about as much as a feather. But do you think
20 your opposition to the death penalty as a punishment is such
21 that it would effect your ability to fairly weigh these
22 factors, that you would automatically come back with a life
23 sentence and against the death penalty even if we proved that

1 the aggravating circumstance outweighs the mitigating factors
2 beyond a reasonable doubt? Let's say we proved our case to
3 your satisfaction.

4 A Yes.

5 Q Would you be --

6 A But even proving your case doesn't warrant the death
7 penalty.

8 Q No. If we prove --

9 A It's not automatic.

10 Q It's not automatic. You have to do a balancing
11 test. You have to have a second phase. But let's say we go
12 into that second phase and we convince you, so intellectually
13 you know in your mind, in your heart that we proved our case
14 that the aggravating circumstance or circumstances outweigh
15 these mitigating factors beyond a reasonable doubt, then
16 would you ignore that and not be able to follow the Judge's
17 instruction of the law and go into the second, go into a life
18 verdict?

19 A I might find that my mitigating beliefs would
20 outweigh --

21 Q Your mitigating beliefs outweigh the law; is that
22 what -- am I right? Pardon?

23 A Yeah, I'm trying to imagine me sitting there and

1 that being the --

2 Q Because remember, if you get picked for this jury
3 and we get to that point, the State wouldn't have a fair
4 trial. They wouldn't have their day in court if you would
5 automatically come in with a life verdict, if you can't
6 fairly consider the death penalty and return that type of a
7 verdict if we prove our case beyond a reasonable doubt.

8 A Because that's what's being, I mean, that, that's
9 what, that's where you start is with the death penalty?

10 Q Yeah. You start out --

11 A That's where the law starts there and it goes down
12 from that?

13 Q Well, you can consider all the penalties but --

14 MR. INGRAM: Objection.

15 THE COURT: Just a minute. What's your
16 objection?

17 MR. INGRAM: Mr. Bailey is saying you
18 start out with the death penalty and you do not.

19 THE COURT: Rephrase.

20 A So I don't. I have all of those options open right
21 from the start.

22 Q But you have to do a weighing test, a balancing
23 test. And when you do this balancing test --

1 A It will never weigh to that.

2 Q You're saying, you're telling us it will never weigh
3 in favor of the death penalty no matter what the evidence is
4 in your mind? I mean, you've got to be candid here.

5 A Right. And I think that there, that's why I'm
6 saying, I think that just the mitigating circumstances would
7 be my belief that that's not an appropriate choice.

8 Q Are you saying that you wouldn't be able to fairly
9 weigh the aggravating circumstance then, that the mitigating
10 factor is always going to weigh heavier or come into balance
11 with the aggravating circumstance because you have that
12 option?

13 A For the option of sentencing, yes.

14 Q Is that what you're saying?

15 A Right. That I'm going to go for --

16 Q Life sentence?

17 A -- B, C or D, yeah.

18 Q You'll never come back with a death verdict if I
19 understand; that's correct?

20 A Yeah.

21 Q Okay. Thank you.

22 THE COURT: Any questions?

23 A Because that's not the only thing that's out there.

1 THE COURT: Do you have any questions?

2 EXAMINATION

3 BY MR. JUHASZ:

4 Q Miss Marsh, how are you doing?

5 A Good.

6 Q It doesn't look like it. Do you need some water or
7 something?

8 A No.

9 Q I'm John Juhasz. That's Jerry Ingram. He and I
10 represent Donna Roberts. You seem a little bit frustrated
11 and I want to -- believe me, nobody --

12 A I just think this is really hard.

13 Q It is hard. Jerry is fond of saying --

14 A I mean, you're asking me about questions about how I
15 feel about being sequestered, and I'm thinking we're saying
16 this in front of somebody who's --

17 Q Jerry is fond of saying that if any of the lawyers
18 were sitting up there asking the questions that you're being
19 asked --

20 A And you never do.

21 Q We learned that in law school, by the way, where
22 professors get to pick on people, and we just sort of carry
23 that through during voir dire because we didn't like being

1 picked on when we were in law school, so our chance to get
2 even is in voir dire.

3 A You know, and I really don't want to trivialize that
4 but could you spell that?

5 Q Spell what?

6 A Voir dire.

7 Q Yes. V-o-i-r, second word, d-i-r-e.

8 THE COURT: To speak the truth. French.

9 Q Let's do a couple of ground rules. First of all, if
10 I say something that you don't understand what the heck I'm
11 talking about, stop me. Okay. Because you're, in my
12 opinion, really trying to get this and understand it. And
13 I'm going to tell you something, and I'm not kidding when I
14 say this, a good chunk of the lawyers in Ohio don't know what
15 we're talking about when we do this. I mean, there's lawyers
16 out there who do real estate and personal injury law and when
17 you're talking about the death penalty and how all this
18 works, they don't know what we're talking about.

19 So my only point there is, don't feel bad about that
20 because we're hitting you with a whole bunch of new stuff and
21 trying to see if you understand it, and trying to ask you
22 what the heck you would do in a given situation. Okay?

23 We're not, nobody here is trying to change your

1 opinion. We just want to see if there's something about your
2 opinion that's either going to allow you or prevent you from
3 being a juror in this case.

4 A And realize this: That my opinions have been just,
5 have been formed, I think I said they've been formed out
6 there.

7 Q That's okay.

8 A And it's easy to hold them, you know. Now my
9 opinion is on trial, and I know there's not a right or wrong
10 but that's what's being challenged. I mean, that's what I'm
11 having to decide, what is it? How far will I, how far does
12 this go, I guess is my thinking.

13 Q I want you to understand, your opinion is not being
14 challenged. It's not on trial. It's not on trial.

15 A I know. It's my thinking, thinking it through an
16 application instead of just in theory.

17 Q And I'm going to tell you something. We've been
18 doing this now for a little while, as you probably know.
19 We're not close to being done, to be honest with you. And
20 we've had a range of people. So I don't want you to think
21 that just because you think a certain way or because you
22 formed your opinion out there. We have people come in here
23 who feel badly, you know what? I read about this case.

1 Well, you know what? When you were reading the
2 paper you didn't know you were going to get a jury summons.
3 Don't feel bad about it. Okay. But we have to ask the
4 questions. And if you end up not serving on this case you're
5 going to join a long list of people. Don't feel bad about
6 that either. I want to ask you a couple of things.

7 First of all, before I forget, the week before last,
8 April the 8th when you first came in, do you remember being
9 down in Judge Logan's courtroom down at the other end of the
10 hall? Do you remember where you were seated or standing that
11 day?

12 A Uh-huh.

13 Q Can you tell me? If you go in the double doors --

14 A I was on the left side. They had already filled up
15 the benches and there were some chairs up front. And there
16 was one woman sitting on the first seat and nobody else, so I
17 went up and sat in the second seat.

18 Q Let me see if I have this straight. When you go in
19 the doors, you would have gone off to the left side of the
20 courtroom? Actually as the Judge came out on the bench, you
21 would be on his right then?

22 A Yes. Does that mean something?

23 Q No. It's probably easy to get paranoid sitting in

1 that chair with lawyers and judges asking you questions. I
2 just wanted to to make sure that I understood where you were.
3 And you were up closer toward the front because the seats
4 were all filled up?

5 A Right.

6 Q Did you, that morning, other than what Judge Stuard
7 said when he was telling you about the case, did you hear
8 anybody else in the courtroom talking about the case?

9 A Uh-huh.

10 Q Can you tell us about that?

11 A There were two or three women, I couldn't tell,
12 behind me who had apparently read in detail. And they were
13 really -- I think, again, as I said on my paper, I know I
14 read a lot, but a lot of it just goes in and out. I don't
15 pay that much attention to this county. So they had a whole,
16 they brushed me up on the newspaper readings more than
17 anything.

18 Q Tell me about that. What do you remember them --

19 A Well, I think that's where I heard the name
20 Fingerhut.

21 Q Down there?

22 A But I still didn't hear that other name that showed
23 up on the paper when I took it home to fill it out.

1 Q Nathaniel Jackson?

2 A Yeah. I think maybe they were talking about e-mail.

3 Q Okay. E-mail in connection with the case?

4 A Yeah.

5 Q If you remember, was this before or after Judge
6 Stuard came off the bench?

7 A Before. We were quiet once he came in.

8 Q We always are when Judge Stuard comes into the
9 courtroom. Other than, you seem to remember something about
10 e-mails, you said that they sort of brought you up to speed.
11 And I have the impression from your questionnaire that you
12 kind of read some things about the case?

13 A Yeah. But it seemed like it was a long time ago.

14 Q And now these ladies obviously seemed to know
15 obviously more about the case than you do?

16 A Oh, yeah.

17 Q And the way you say, oh, yeah, tells me they had
18 quite a bit of information?

19 A Well, they talked about a lot of things. They were
20 retired and --

21 Q All right. I'm less interested in that because --

22 A I wasn't listening to all of it, but I know they
23 were, why we were all here and that sort of thing.

1 Q Specifically about this case, do you remember
2 anything that they said?

3 A No. That I could, you know, say infiltrated my
4 opinion, no. I can barely remember what they said. I mean,
5 I didn't walk away with any impression that oh, boy, I don't
6 want them on this jury, nothing like that.

7 Q But they did seem to know what case they were there
8 for?

9 A Yeah.

10 Q Do you remember how many of them were talking?

11 A As I say, I kind of glanced once. I saw two women.
12 I don't know if a third one joined them or not.

13 Q Anything else you remember about them? What they
14 looked like? What they were wearing?

15 A One woman had short gray hair. The other one was
16 directly behind me so I didn't see her. Not particularly
17 well put together.

18 Q Not particularly --

19 A Well put together or anything. Just ordinary.

20 Q Have you seen either of those people in the
21 courthouse since you've been coming back for this service or
22 anything like that?

23 A No. Are you kidding? There's nobody out there.

1 I'm the last person here, I'm pretty sure.

2 Q Well, sometimes we've had some jams and people have
3 spent some time together. You haven't seen them in a
4 situation like that?

5 A No. And frankly, I wouldn't recognize them if I
6 did.

7 Q Did either of them express an opinion about Miss
8 Roberts or about Mr. Jackson, anything like that?

9 A No.

10 Q Let's talk for a couple of minutes about this thorny
11 death penalty issue. And all I want to do is, first of all,
12 make sure that you understand generally how the process
13 works. And do you think you're okay with that or do we want
14 to spend a couple minutes talking about that?

15 A I'll ask questions if it comes up.

16 Q All right. You've probably heard the phrase before
17 taking the Fifth; correct?

18 A Uh-huh.

19 Q We're not going to talk about what all that means
20 right now, but I'm going to ask you to sort of take as a
21 given, in a criminal case that means that the government
22 always has the burden of proof. They either prove the case
23 or they fail to.

1 A Without me?

2 Q Without you or without us. Without the defense. We
3 don't have to do anything. They either convince you of the
4 correctness of their case by what we call proof beyond a
5 reasonable doubt, and if that's the case then they win. You
6 find the Defendant guilty. But if they don't do that you
7 find the Defendant not guilty. All right?

8 A Okay.

9 Q You have to do that. And I'm going to step away
10 from this case for a second. I think Judge Stuard mentioned,
11 he's been mentioning to some of the jurors that one of the
12 reasons that the Legislature has said that a murder is more
13 serious to warrant consideration of the death penalty as a
14 possible punishment is if the person you kill is the
15 Governor. Okay? Now, you and I may agree or disagree with
16 that. It kind of doesn't matter because the Judge or any of
17 the lawyers in this room could tell you that, all of us who
18 practice law have certain areas of the law where we just
19 don't personally agree with what the law is. But because we
20 all have to play by the same set of rules to make everything
21 fair for everybody across every case, I can't come in here
22 and say, for example, well, you know, Judge, I know this is a
23 death penalty case but I don't personally believe in the

1 death penalty so therefore I refuse to do anything in this
2 case. That would not be fair because we have to make the
3 rules work the same in every case. Am I making sense to you?

4 A Uh-huh.

5 Q So whether we think that's a good idea or not, one
6 of the things for which you can get the death penalty is if
7 they killed the Governor. The State, in a case like that,
8 would have to prove two things to you beyond a reasonable
9 doubt at the first phase of a trial, which really pretty much
10 works like any other criminal trial, any robbery or
11 shoplifting or anything.

12 First they would have to prove to you that that
13 person killed a guy named Bob Taft. And then secondly they
14 would have to prove to you that Bob Taft was the Governor.
15 And I like to use that example because, see, they have to do
16 it with evidence. You can't just sit there and go, well, I
17 live in Ohio, I know that Bob Taft is the Governor. They
18 have to prove it to you. All right?

19 A Uh-huh.

20 Q Interesting. You seem to be pondering that. But
21 they would in a case --

22 A Prove identity. Well, that shouldn't take too long.

23 Q No. It would be fairly easy to do. But they just

1 may forget to do it. They may say to themselves, what the
2 heck, everybody knows Bob Taft is the Governor. And if the
3 jurors are really doing their job they're going to go, yeah.
4 But those folks, they have to do it with evidence and they
5 didn't do it, so therefore I might find the person guilty of
6 murder but not guilty of the specification. And the
7 specification would be that additional allegation that, not
8 only did you commit murder but you killed the guy who was the
9 Governor of the state of Ohio. Are you okay with all that?

10 A Go on.

11 Q If they prove both of those things, if they prove an
12 aggravated murder, and if they prove a death penalty
13 specification, a reason to go to a second phase, then that's
14 what happens. The jury comes back and goes to a penalty
15 phase.

16 If at the first phase they either don't prove that
17 the person, they don't prove the aggravated murder, well,
18 then what happens? You find the person not guilty and
19 everybody goes home; right? No need to have a penalty trial
20 for somebody who's found not guilty; correct?

21 A Uh-huh.

22 Q Or maybe they proved the person guilty, as I said
23 before, but not guilty of the death penalty specification.

1 They forget to prove he's the Governor. They assume
2 everybody knows so they don't bother proving it and the jury
3 does their job and says they didn't prove it to you. I find
4 that Juhasz killed a guy named Bob Taft, but I find him not
5 guilty of the specification, that he killed the Governor of
6 the state of Ohio. Are you okay with that?

7 A And the intent and the reasons behind it don't enter
8 into that first phase? That doesn't come until you're
9 considering the aggravation, what brought it about? I mean
10 isn't intent --

11 Q I don't want --

12 A Did I kill Bob Taft in my car, or did I do it with a
13 handgun?

14 Q I don't want to go too far down this path because I
15 won't be allowed to. But for present purposes I'll tell you
16 that the Judge gives you the instructions about what
17 constitutes aggravated murder. It is basically that a person
18 purposely and with prior calculation and design, what we used
19 to call premeditation, purposely causes the death of another.
20 All right?

21 A Okay. And is that separate from the other
22 specifications? Could it have been brought just at -- is
23 there just aggravated murder?

1 Q Yes.

2 A Does that stand alone ever or are there always these
3 other attachments? So people can be --

4 Q That's right.

5 A -- just killing to kill.

6 Q Right. In fact, let me give you --

7 A Without robbery or anything else attached?

8 Q Right.

9 A And does that charge also have a death penalty?

10 Q No. So let me try to do this for you. You don't
11 like it. It doesn't make any sense to you?

12 A It makes no sense.

13 Q But it's the law.

14 A It seems to me with those attachments the mitigation
15 is that it was, it was a robbery that went bad and it ended
16 up with a killing. I mean that's, that's what that's open
17 for it seems to me. In other words --

18 Q Let's try to do it in stages and then we'll talk
19 about mitigation. First of all, if I pull out a gun right
20 now and shot my buddy Jerry, that would be murder. I
21 purposely caused his death. I pulled out a gun and shot him
22 and killed him. Okay?

23 A Uh-huh.

1 Q I can't get the death penalty for that. We call
2 that just plain murder in Ohio. Aggravated murder is murder
3 plus prior calculation and design. Say I killed Jerry
4 tomorrow, because today I go, you know, Jerry has been
5 getting to me this whole damn trial, and tomorrow I'm
6 bringing a gun and I'm going to plug him, and I do. Now I
7 have purposely caused his death, which is murder, plus
8 because I thought about it, because there was prior
9 calculation and design, now the law calls it aggravated
10 murder. I still can't get the death penalty for that. I go
11 to jail for a very long time for both of those offenses but I
12 can't get the death penalty. Right or wrong, the Legislature
13 has said that it's only if you take an aggravated murder and
14 something else with it that makes it serious enough for
15 consideration for the death penalty.

16 A Then they don't really believe in it either.

17 Q Well, I would love to sit down and have a cup of
18 coffee with you some time and talk about the death penalty,
19 because you have a lot of interesting views. And you may
20 well be right about that. But as Judge Stuard said, it's the
21 law and that's what we have to deal with.

22 Now, if you find in my imaginary example before
23 where I'm charged with killing the Governor, if you find me

1 guilty of killing the guy and they prove that he was the
2 Governor when I killed him, now you found me guilty of both
3 of those things, then we would go to a second phase. And now
4 you would have to decide punishment. And you would have to,
5 to do essentially two things. You would have to take the,
6 what the law calls the aggravating circumstances, the reason
7 to consider imposing the death penalty -- and let me give you
8 a little bit of help here because the aggravating
9 circumstances at the second phase is actually the
10 specification from the first phase.

11 So when we go to the second phase in my imaginary
12 trial and the State stands up and says, give Juhasz the death
13 penalty, and they're going to tell you why. They're going to
14 say, look, he was the Governor. That's the aggravating
15 circumstance, that specification. Okay?

16 A Okay.

17 Q My lawyers will stand up and say, don't give Juhasz
18 the death penalty. There could be a million reasons. Maybe,
19 you know, I've got some mental problems and I thought Bob
20 Taft was a martian, whatever it is. Maybe I had a bad
21 childhood, you know. Maybe I was --

22 A Maybe you're in education.

23 Q But whatever those reasons would be, then you have

1 to weigh them. And Mr. Bailey was right, you have to weigh
2 the reason to impose the death penalty against the reasons
3 not to and decide whether the reasons to impose the death
4 penalty outweighs the reasons not to by proof beyond a
5 reasonable doubt. Now --

6 A And what I'm saying is, what would enter into that I
7 believe would be my, you know, it's not just going to be two
8 scales. It's going to have a third piece on it and I'm going
9 to be saying, but I don't think that should be there. I
10 don't think that that should be what I'm having to decide,
11 the death penalty.

12 Q You do not think you should have to decide that?

13 A I think that would be the part that would tip me,
14 would tip the scale.

15 Q Okay.

16 A If that's my only choice and if that's what the law
17 says, that if you kill the Governor here's your option:
18 Death.

19 Q Okay. It does not work that way. See, if you kill
20 the Governor you have four options. And frankly --

21 A The same four that I have?

22 Q Yes. That's really why I stood up to ask you
23 questions, because you said something about choice at the end

1 and I want to see if there's a true choice in your mind or
2 there's not. And the choice is, you have, there are four
3 potential penalties. Are you okay? Do you understand what
4 those are?

5 A Uh-huh.

6 Q The question is, and you heard Mr. Ingram object
7 because going into the second phase none of those penalties
8 should have a leg up or be at a disadvantage.

9 A Okay.

10 Q And so if you can, nobody can ever say to you,
11 listen, even if the State proves Juhasz planned it and he
12 killed the guy named Bob Taft, and even if the State proves
13 that Bob Taft was Governor so they met their burden at the
14 first and second phase; you're standing there at the second
15 phase --

16 A Here's where you still fall down. That you did it
17 with absolute malice, with hatred, intent, calculated and you
18 planned and you plotted it all out step by step.

19 Q Right.

20 A For no other reason than, that you are a bad person.

21 Q A mean, nasty guy.

22 A A bad person.

23 Q Can you consider?

1 A So there would be no mitigating circumstance to
2 outweigh the aggravation?

3 Q I'm just a bad guy.

4 A I don't know that I could have you killed.

5 Q All right.

6 A I mean, I don't know. You're not, you're not, I
7 mean, I know what they did to that presidential candidate.
8 What would you do if it was your child that was shot? Would
9 I want him killed, the person who did it? In theory it's
10 easy to say no. I still even -- why should two people die if
11 one already has? I might be, I mean that, that might be a
12 lost human --

13 Q Let me try to do this. And I'm going to try to boil
14 this down to one question, see if I can do it. If you got to
15 a second phase in this or any other death penalty case, would
16 you be able to fairly consider those four sentencing options
17 or are you telling me that the death penalty is --

18 A I'm considering three of them.

19 Q The death penalty is just out of the equation for
20 you?

21 A Yeah. All right.

22 Q That, listen, there's nothing wrong with that. The
23 only reason I got up here and asked you questions, because I

1 kept hearing you say stuff about choice and if you make the
2 choice between the four, that's okay. But if you're telling
3 us honestly there's only three in the equation, that's also
4 okay, we just need to know that. And you're saying there's
5 only three in the equation; right?

6 A Uh-huh.

7 Q I appreciate that. Thank you.

8 THE COURT: Any objections, fellows?

9 MR. JUHASZ: No.

10 MR. INGRAM: No.

11 THE COURT: I'm going to excuse you. You
12 have answered the questions the way that you were asked to
13 answer them. You told us what you believe. Thank you so
14 much.

15 A So what do I do now?


16 THE COURT: You're excused from any
17 participation. Like I said, we have to have 12 people who
18 are able to make that determination. And you fall into a
19 pretty large group we've had here that they're not able to do
20 that. That's understandable. Everybody has their own view
21 on things. But we thank you for your time.

22 (Whereupon, court adjourned for the
23 evening.)

* * *

REPORTER'S CERTIFICATE

This is to certify the foregoing represents a true and correct copy of the proceedings had in the aforementioned cause as reflected by the stenotype notes taken by me on the same.


Richelle J. Guerrieri,
Official Court Reporter

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO,) Case No. 2001-CR-0793
Plaintiff)
-vs-) Judge John M. Stuard
DONNA M. ROBERTS,) VOLUME IX
Defendant) VOIR DIRE PROCEEDINGS

Capital Murder Trial held on Wednesday, April 23, 2003

BEFORE: HONORABLE JOHN M. STUARD

AT: Trumbull Co. Court of Common Pleas
161 High Street, NW
Warren, Ohio 44481

APPEARANCES:

On behalf of the Plaintiff:

Messrs. Kenneth N. Bailey and Christopher Becker,
Attorneys at Law

On behalf of the Defendant:

Messrs. J. Gerald Ingram and John B. Juhasz,
Attorneys at Law

Official Court Reporter: Richelle J. Guerrieri

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VOLUME IX

INDIVIDUAL VOIR DIRE

KEVIN B. PATTERSON

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WEDNESDAY, APRIL 23, 2003

WHEREUPON,

KEVIN B. PATTERSON

being first duly sworn, according to law, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q Good morning. Mr. Patterson, you read that handout that was given to you?

A Yes, sir.

Q You have a pretty good idea of why we're here then?

A Right.

Q Miss Roberts, the Defendant here is charged with aggravated murder with specifications. Under Ohio law a person who is found guilty of aggravated murder or murder does not necessarily qualify for the death penalty, does not necessarily face the death penalty.

The Legislature has designated certain things that have to be associated with the murder before the death penalty arises. The example used all the time, if you shoot the Governor or kill the Governor, the fact that he is Governor is a specification to be attached to the aggravated murder charge which would then raise the specter of the death

1 penalty. There are other things, a police officer. And in
2 this particular case the specifications concern a burglary
3 and a robbery.

4 Now, the burden of proof in any criminal case rests
5 entirely with the prosecution. The defense has the right to
6 remain silent throughout the entire trial. Attorneys need do
7 nothing. Most trials don't go that way. The attorneys at
8 least ask questions, whatever, but they don't have any
9 obligation to do so.

10 The prosecution at this trial will be called upon to
11 prove all the elements of the aggravated murder and the
12 specifications before the case, and the jury would have to
13 find that they proved them beyond a reasonable doubt before
14 the matter would go to a second phase.

15 Now, if the State failed to prove by the requisite
16 burden all elements of the crime, then the jury would
17 properly return a finding of not guilty. If the verdict
18 would be one of guilty, however, then this jury would be
19 called upon to listen to further presentation of fact, and
20 the prosecution then has the burden of proving beyond a
21 reasonable doubt that the aggravating circumstances, which
22 are reasons submitted to the jury in favor of imposing the
23 death penalty, weigh those against the mitigating factors,

1 which would be reasons given to the jury as to why they
2 should overlook the death penalty and impose some lesser life
3 imprisonment.

4 We can't wait until the jury has already heard the
5 case and made a decision to ask these questions. The reason
6 the questions have to be asked is that everybody has their
7 own view on capital punishment. There are some that believe
8 that if a life is taken that person taken the life should
9 forfeit their own life. An eye for an eye, the old
10 testament. That is not the law of Ohio. It's only under
11 certain types of aggravated murder does this arise.

12 On the other end, you have people that feel for
13 whatever reason, moral, religious reasons that they could
14 never participate in any situation where they had to decide
15 whether a person receives the death penalty. Now, whatever
16 opinion anybody has is fine. That's their own opinion.
17 We're all entitled to our own opinion. But in order for a
18 fair trial to occur, if you had a person who believed in an
19 eye for an eye, the Defendant could never get a fair trial.
20 If you had somebody who could never impose the death penalty
21 under any circumstances, then the State couldn't get a fair
22 trial.

23 So the questions that will be put to you is to find

1 out what your position is. And whatever your position is, is
2 fine. These folks will accept that. But we need 12 people
3 who are able to follow the law. And the law says that if the
4 State proves what they have to, then the situation might
5 arise where this jury would have to consider the four
6 possibilities of sentence, one of them being the death
7 penalty. If a person isn't able to do that, that's fine.
8 But a person can't just take a murder and automatically
9 impose the death penalty. That isn't the way it works.

10 The other issue will be questions concerning what
11 pretrial publicity you have been subjected to. Many of the
12 people on this jury have read something about this matter.
13 This case had its share of publicity, as anything of this
14 nature would. And just because a person has had some prior
15 exposure does not disqualify them as a juror, unless they're
16 not able to say to themselves I could set that aside. This
17 matter has to be decided on the evidence presented in this
18 courtroom. Anything outside this courtroom is not evidence,
19 can't be used in making the determination it has to be made.
20 So you get the picture; right?

21 A Right.

22 THE COURT: Gentlemen of the prosecution,
23 do you wish to inquire?

1 MR. BECKER: Thank you, Your Honor.

2 EXAMINATION

3 BY MR. BECKER:

4 Q Good morning, Mr. Patterson.

5 A Good morning.

6 Q My name is Chris Becker. I work for the county
7 prosecutor's office. This is Mr. Bailey. I don't know if
8 you recall seeing him about two weeks ago?

9 A Right.

10 Q And I was involved in another matter so I, I'm able
11 to join Mr. Bailey now. I assume you recall Mr. Ingram and
12 Mr. Juhasz?

13 A Right.

14 Q And they I believe were in court with Miss Roberts,
15 the Defendant in this case. I want to first of all thank you
16 for attending to this service. It's a very important civic
17 duty. And I think other than probably serving in the
18 military, you'll find it's probably the most important civic
19 duty you can perform short of being in the military.

20 As the Judge indicated to you, there's really no
21 right or wrong answers here. Your opinions may and your, you
22 know, no matter how ingrained they are in your mind, your
23 opinions may or may not keep you on or off this jury. And

1 there's no right or wrong answers. I mean, if you have
2 something that's important, and it's a conviction of yours,
3 by all means we're not asking you to give that up. But you
4 just may not be a particularly good juror for either
5 ourselves or for the defense in this case. So that's why we
6 have to ask you some of these questions. It's not to say you
7 might not be a good juror in another case or a different kind
8 of case.

9 Throughout this process this morning, if you have
10 something you want to question me about or ask me about, by
11 all means do that, because this is the only opportunity that
12 we're really going to have to interact with each other.

13 Once the case starts and once we choose you and you
14 sit in this jury box over here, we can't lean over to you and
15 say, hey, by the way, Mr. Patterson, what's your feelings on
16 this? Or, what do you think about that witness? I mean, we
17 have to live by a strict code of conduct that we can't even
18 speak to you if we see you in a restaurant or if we see you
19 in the restroom or out in the hallway during one of the
20 breaks other than we can acknowledge you and maybe say hi.
21 Because we don't want anyone to think there's anything going
22 on, you know, we're influencing the jurors in this case. So
23 it's very important that we, you know, discuss the issues in

1 this case right now at this time because it's the only
2 opportunity we have to do that.

3 First of all, I want to start out with the two areas
4 that the Court mentioned. It appears by your questionnaire
5 that you do believe in the death penalty?

6 A Yes.

7 Q And you do believe in some cases it would be
8 appropriate; correct?

9 A Correct.

10 Q Now, one of the odd things about this kind of case,
11 and the Court mentioned it as well, is that we're being
12 presumptuous here. We may never get to the point in this
13 case where you have to consider the death penalty because you
14 may find that we don't prove her guilty or guilty of the
15 specifications that call into play the death penalty. Is
16 that kind of clear?

17 A Right.

18 Q This case is actually, if it goes that far, is
19 actually going to have two phases. We'll have a first phase
20 where we're going to determine her guilt or innocence. And
21 then if you determine she's guilty by proof beyond a
22 reasonable doubt we would come back for a second phase where
23 you would have to consider the death penalty and three other

1 options that we refer to as life options: Life with no
2 parole; life with parole after 30 years, and; life with
3 parole after 25 years of service.

4 What we're looking for is just simply people that
5 will fairly consider, if we get to that point, and again
6 we're being presumptuous, but if we get to that point they
7 will fairly consider all four of those options.

8 Do you believe that you could fairly consider all
9 four of those options as a penalty for this Defendant in a
10 criminal case?

11 A I believe I could.

12 Q You wouldn't say, boy, I'm so in favor of the death
13 penalty that I would give the death penalty a head start?
14 Or, I would place more importance on trying to push her into
15 the death penalty? Or maybe the other way, I feel not so
16 strongly about the death penalty that I'm going to exclude
17 the death penalty and consider the other life options before
18 I give her the death penalty?

19 A No, I would have to look at all the facts before I
20 made a determination.

21 Q And you would, you would be willing to do that, look
22 at all the facts in evidence? And the Court will give you
23 certain instructions when we get to that point. As the Court

1 indicated to you, the death penalty, if you were to get to
2 that second phase and if the State would prove its case, is
3 not automatic. It's not required. It's not automatic. It's
4 an option that you have. And it's one of the four options
5 that you have once you get to that phase.

6 But I guess what I'm hearing you say is, if it came
7 down to it you could sign a verdict, sign a piece of paper
8 with 11 fellow jurors once you went back in the jury room, if
9 the State proved its case, you could sign a verdict form
10 calling for the imposition of the death penalty if the facts
11 warranted it and the law allowed it?

12 A I believe I could.

13 Q Now, you also mentioned in your questionnaire that
14 you had heard of this case; is that correct?

15 A Yes, I have.

16 Q Where did you hear from it? I think you watch
17 Channel 21, you said?

18 A Once in awhile when I have time I watch TV.

19 Q And --

20 A Not too often.

21 Q You're probably like me. Read it in the newspaper?

22 A I saw a little bit in the paper, and I saw a little
23 bit on the television.

1 Q Coming into this courtroom today based upon what
2 you've heard and, I don't know if you've discussed this with
3 anybody you work with or discussed it --

4 A No.

5 Q Family, friends or anything like that. As you come
6 into the courtroom today, do you have an opinion about
7 whether she's guilty or innocent here today?

8 A Not really, no.

9 Q So you just read the information because you're
10 involved in the community and want to know what's going on,
11 maybe happened to see it on the news or read it in the
12 newspaper?

13 A I was one of the people when Judge Stuard said,
14 raise your hand if you heard anything, I didn't raise my hand
15 because I couldn't remember. He mentioned that, you'll
16 probably remember in an hour or two. And I got down the road
17 an hour or two and I said, yeah.

18 Q And that was before you filled out the
19 questionnaire?

20 A Yes.

21 Q Obviously, because you filled out the questionnaire
22 that obviously you had heard something in this case?

23 A Right.

1 Q Does the fact that you now I guess recalled your
2 memory, do you think that's going to have any ability or --
3 I'm sorry -- any affect on your ability to serve as a juror
4 in this case?

5 A No, I don't think it would.

6 Q Because you understand what we're trying to do here
7 is get 12 people to decide this case not about what they read
8 in the Tribune Chronicle, not about what they read in the
9 Vindicator or saw on television, but what they hear and see
10 in this courtroom.

11 And we can't let, as it hard it may be, we can't let
12 those outside influences come in and taint your decision in
13 this case.

14 A I don't feel that would be a problem.

15 Q Now, this case involves probably one of the most
16 serious crimes and probably the most serious crime in the
17 state of Ohio, and perhaps some of the most important cases
18 in these courtrooms, and that's a life and death situation.
19 It obviously involves the death of an individual. It
20 involves the potential death of the Defendant because she's
21 facing the death penalty.

22 How do you feel coming in here having to decide a
23 case of that magnitude? Is that going to create more

1 problems for you? Or would you say, boy, I wouldn't mind
2 serving on jury duty but I wish it wasn't as deep or as heavy
3 as this case was or as involved as this case is?

4 A That really doesn't affect me one way or the other.

5 Q Now, in every criminal case the State has the
6 burden, and I'm sure you've heard it on television or read it
7 in the newspaper or read it in a novel, somewhere run across
8 the term reasonable doubt. That's the standard that is used
9 in our courtrooms to determine the guilt or innocence. And
10 it's proof beyond a reasonable doubt. And I think every
11 person gets a different idea or connotation of what proof
12 beyond a reasonable doubt means. The Court will give you a
13 definition of that.

14 And I noticed in your questionnaire that you
15 actually I think work somewhat in the court system or prepare
16 cases for litigation; is that correct?

17 A I, part of my job is to investigate cases and apply
18 them to statutes and laws.

19 Q And that's a little bit what you'll be doing here.
20 You won't be doing it from the investigatory side but you'll
21 be doing it from the juror side. Have you ever testified in
22 any of those cases?

23 A No, I haven't had to testify.

1 Q Do those cases that you investigate, do they end up
2 going to like a Common Pleas Court or a Federal District
3 Court?

4 A No, Federal District Court. It's basically job and
5 benefit rights.

6 Q And have you ever been called to testify in any one
7 of those cases?

8 A No.

9 Q This case is going to be a little bit different role
10 for you. You understand that the police and the sheriff's
11 department and the crime investigators, they've done the
12 investigation. And one of the things that you will not be
13 permitted to do is to investigate this case on your own.
14 That's not going to be a problem for you, is it?

15 A No.

16 Q Because we don't want you to say, boy, you know, I
17 heard about this location and I'm going to drive out to the
18 house and take a look at it, or this place and see it for
19 myself and do those types of things.

20 When you prepare your cases I assume that they are
21 not for criminal proceedings. They're probably for civil
22 lawsuits?

23 A Right.

1 Q And I suppose investigating those cases they told
2 you what they, the evidence that they need is a preponderance
3 of the evidence in those cases?

4 A That's correct.

5 Q But you understand that there are really two
6 different burdens of proof there. And we're talking about
7 reasonable doubt and preponderance of the evidence. And I
8 guess one of the ways to look at it, and I don't know,
9 probably since I was in law school one of my professors
10 mentioned it, sort of stuck in my head is, it's sort of like
11 a glass water. Your, your cases that you investigate that
12 have to be proved by a preponderance of the evidence, that's
13 basically one drop over the halfway mark. That's basically
14 what preponderance of the evidence means.

15 Now, when we get to this second we have to prove
16 things like proof beyond a reasonable doubt. And that's
17 pretty close to the top of the glass of water. It's not to
18 the very top, because that's proof beyond all doubt. And the
19 Court is going to tell that we don't have to prove a case
20 beyond all doubt, just beyond a reasonable doubt. But it may
21 vary. Some people it may be an inch or two from the top.
22 Some people, it may be a quarter of an inch. But it's not
23 quite to the top. But it's getting pretty close to the top.

1 Do you feel that you will be able to make a
2 determination in such a case as the magnitude of this case
3 involving the death of an individual, a potential death of
4 the Defendant, and do you feel that you will be able to make
5 a determination based on reasonable doubt and not all doubt,
6 not having that cup filled up all the way but reasonable
7 doubt, maybe within an inch or two or quarter inch of the
8 top?

9 A I believe I can do that.

10 Q Because one of the things that happens sometimes in
11 criminal cases, people say, boy, you know, we just had
12 somewhat, it's a very important case and we know they did it
13 and we know that they were guilty of it. We know the State
14 proved its case. But, boy, to suffer the death penalty we
15 couldn't find that, so we found her not guilty. You wouldn't
16 be of that kind of mindset, would you?

17 A No.

18 Q And on the other side of that coin, you wouldn't
19 say, well, you know, the State proved most of the case to me.
20 There were a couple things they didn't prove. But it was
21 such a terrible crime that I had to find her guilty even
22 though the State didn't prove some of the elements of the
23 crime. They didn't fill that glass of water up near the top.

1 You wouldn't do that either, would you?

2 A No.

3 Q Now, in this particular case because it does involve
4 the death of an individual and the potential death of the
5 Defendant in this case, all criminal cases the court requires
6 every juror as much, and as difficult as it may be, not to
7 consider sympathy in the case.

8 You are going to see some graphic photographs of the
9 deceased in this case, I imagine. I believe you are a
10 Vietnam Veteran?

11 A Right.

12 Q So I imagine you've seen your share of suffering?

13 A Some.

14 Q I don't know what exactly you did in the war, but
15 I'm sure you've seen some suffering. I'm assuming that's not
16 going to affect you or play a part in your decision?

17 A No.

18 Q Because the Court will tell you, you can't consider
19 sympathy for the victim, who's obviously deceased. And you
20 can't consider sympathy for the Defendant because she may
21 face this potential death penalty, or some other penalties
22 that may be not good at all.

23 I think you even mentioned in your questionnaire

1 that the, sometimes it's worse to spend life in prison as
2 opposed to the death penalty. And you may very well be right
3 on that.

4 So you believe that you could decide this case
5 without being sympathetic to either party? In other words, I
6 guess what I'm saying is, you could look at these photographs
7 and say, boy, this poor guy got shot and killed and I saw the
8 photographs. I know the State didn't prove the case but I
9 can't let this go unpunished. And there's been some
10 indication that she was involved, I've got to find her
11 guilty. You wouldn't do that, would you?

12 A No.

13 Q And by the same token, you wouldn't say, boy, I've
14 been in the courtroom two or three weeks now and I've seen
15 her and I know the State proved beyond a reasonable doubt her
16 guilt. I know the State proved beyond a reasonable doubt the
17 aggravating circumstances outweigh the mitigating factors in
18 the penalty phase. But, boy, I can't sign the death verdict
19 because I really feel sorry for her for whatever has happened
20 in her life or for whatever reason. You wouldn't do that
21 either, would you?

22 A No, I wouldn't do that either.

23 Q Okay. Now, this case is a little bit different in

1 some respects because we're going to tell you right now and
2 be very up front with you. Miss Roberts is not the actual
3 killer. She is not the person who pulled the trigger in this
4 case. She's what we call a complicitor, an aider and
5 abettor. She assisted the individual. I think that you --

6 MR. INGRAM: Objection. She's alleged to
7 have assisted.

8 MR. BECKER: Alleged. And I apologize.

9 Q The allegation is that she is alleged to have aided
10 and abetted, I think you mentioned in your questionnaire
11 Mr. Nate Jackson. So she is alleged to have assisted him in
12 that crime.

13 Does that change anything for you in terms of, first
14 of all, determining whether she would be guilty or innocent?
15 Would you have a more difficult time or require more proof?
16 And second of all, does that require, does that change things
17 for you regarding the death penalty?

18 So let me ask you, first of all, is that going to
19 create a problem in determining her guilt or innocence?

20 A No, I don't think it would, no.

21 Q Because you understand in this case she's not the
22 shooter. There will probably be no ballistics, gunshot
23 residue showing that she fired a gun because we're telling

1 you right now, she's not alleged to have done that. And the
2 allegation is not that she fired the gun. When we get to the
3 death penalty phase, if we get that far, and if we're able to
4 prove the case, the allegation again is that she is not the
5 actual shooter, but the allegation is that she aided and
6 abetted someone.

7 We believe that we will still be able to prove to
8 you that the death penalty is an option and is warranted in
9 this case. But some people may have a difficult time if we
10 get to a scenario like that and they may say, I can't
11 consider the death penalty for this person because they
12 didn't actually do the killing. They only aided and abetted
13 or they only aided and assisted. Would you have a problem
14 doing that?

15 A No, I wouldn't. I would have to sort it out.

16 Q You still would have to sort it out and fairly
17 determine those four options?

18 A Right.

19 Q One of the other concepts that we deal with here is
20 sort of the flip side of the reasonable doubt issue, and
21 that's the presumption of innocence. You understand that in
22 our system Miss Roberts is presumed innocent as she sits here
23 today?

1 A Right.

2 Q And the fact that she's been charged and indicted
3 cannot be considered by you for any purpose. And I don't
4 know how familiar you are with the grand jury process, but
5 you understand that when the indictment in this case was
6 issued Miss Roberts was not there. Her attorneys were not
7 there. Judge Stuard or no other judge was there.

8 The only people that were there were the prosecutors
9 and the prosecution witnesses as well as the grand jurors.
10 So they've only heard one side of the story. And basically
11 all that grand jury indictment is is just simply an
12 accusation pointing the finger at her and making an
13 allegation of these crimes.

14 You don't sit here today on April 23rd and look at
15 her and say, well, she must be guilty, they're talking about
16 a potential death penalty. They're discussing reasonable
17 doubt and guilt. She sits here in this courtroom with two
18 attorneys, she's got to be guilty, do you?

19 A No.

20 Q You give her that presumption of innocence that is
21 available in our court system as required in our legal
22 system; correct?

23 A I can do that.

1 Q Now, what you're going to have to do as a juror is a
2 little bit like what you've done as an investigator. We've
3 already done the investigation. The Howland Police, the
4 sheriff's department, other investigatory agencies, BCI have
5 done an investigation. You're now going to have to
6 determine, I'm sure you're familiar with this through your
7 work, as to who has bias or interest in this case. Who maybe
8 was in the best opportunity to see or hear or do things in
9 this case that they said they did, and what all this evidence
10 adds up to. Does it get you to that point on the cup where
11 it's reasonable doubt?

12 You're going to find, I guess, that -- I use this as
13 a simple, very simple example. But you would agree with me
14 that if there were a car wreck at lunch today here somewhere
15 on courthouse square, let's say on Mahoning Avenue and High
16 Street where they come together at that sort of odd
17 intersection here on the northwest corner of courthouse
18 square.

19 Let's say someone is coming down High Street going
20 west and they make an illegal left turn, and they turn left
21 on the red light and they get struck by someone coming
22 through on Mahoning Avenue, coming down from the north or the
23 south. If this was a criminal case charging someone with a

1 criminal violation of say illegal left turn, do you believe
2 the State could prove that case with just one witness if that
3 witness was credible enough for you?

4 A With one witness, a credible witness?

5 Q Yes, it was a credible witness.

6 A Possibly.

7 Q It's possible. I'm not saying that it would be
8 certain. And you also probably believe from what you know of
9 investigations and doing things, that it probably could be
10 seven or eight witnesses, and if they were not, none of them
11 were credible the State could probably theoretically not
12 prove its case even with seven or eight witnesses; right?

13 A That's right.

14 Q If they were not credible or they were, you know,
15 blind guys all going to the doctor to get their eyes
16 examined, or they were maybe related to the parties involved
17 in the dispute. Maybe they were related to the defendant and
18 he had just dropped five or six guys off and he was making an
19 illegal left turn because he was in a hurry and they all were
20 his buddies and his relatives. And they said, oh, no, he had
21 the green arrow. He didn't turn left on the right light.
22 That may raise some doubt for you if they were friends with
23 the defendant in the case; right?

1 A Right.

2 Q And that's a little bit of what you have to do as a
3 juror. You have to determine who's, who's biased, whose
4 interest, what reason they're testifying and is that evidence
5 quality enough to get you to convict and to fill up those
6 glasses beyond a reasonable doubt; correct?

7 A Correct.

8 Q You'll be able to do that I'm assuming?

9 A I think so.

10 Q I'm assuming also in your investigations that you
11 have run across what we call circumstantial evidence?

12 A Uh-huh.

13 Q And you've probably even had to gather yourself
14 circumstantial evidence, which is just basically evidence
15 that you can make an inference from. I don't even know if
16 this is an example that's going to fit by what you do, but
17 you deal with sometimes I guess discrimination against
18 veterans?

19 A Right.

20 Q So sometimes you may have, you may investigate let's
21 say a company that has hired zero veterans even though they
22 maybe had 50 apply?

23 A Right.

1 Q There's an inference there that they're
2 discriminating against veterans; correct? That would be
3 circumstantial evidence that they discriminated against them?

4 A Right.

5 Q It's a little bit like the example that, again, an
6 old law school example is, if you go to bed at night and you
7 watch Channel 21 and you're watching the weather and they
8 show you the big green globs that represent on the radar the
9 storm is coming, and you see a line of those from say Dayton
10 all the way up to Sandusky, and they're slowly moving across
11 the radar. And the weather guy says well, we expect some
12 rain tonight. Expect thunderstorms. And you look out your
13 window before you go to bed, you pull the shade down. It's
14 dry out. You can see some of the stars and maybe the moon
15 out. You go to bed and the next morning you wake up and your
16 grass is wet. Your driveway is wet. Your street is wet.
17 Your car is wet. All the neighbors driveways are wet.
18 There's water trickling down the gutter. You may not have
19 seen it rain but you can infer that it rained; right?

20 A Right.

21 Q And there's varying, sometimes there's varying
22 inferences. There's things that can be different. Let's
23 say you have the same scenario but you wake up in the morning

1 and you hear water running and you look out and your driveway
2 is wet and your car is wet. But you look across the street
3 and your neighbor's driveway is not wet. There's no water in
4 the street. There's no water going down the gutter. And
5 then you look out and you look down and you see maybe your
6 wife or your kids hosing the car off getting ready to wash
7 it.

8 Obviously it didn't rain, but the moisture is
9 related to the hose that your wife or your child has there;
10 right?

11 A Right.

12 Q So you have to be careful sometimes with those
13 inferences as to how you make it. But you can do that if you
14 feel confident enough that the inference leads to a
15 conclusion you can draw; right?

16 A Correct.

17 Q And I'm assuming you've had to do that in some of
18 the cases you presented, you said, here are some documents.
19 I know they don't necessarily say we're going to discriminate
20 against veterans but there may be some documents there or
21 there may be some testimony there that would get you to the
22 point where you could say, hey, listen, I know they say this,
23 this and this, but you look at this and this is what they're

1 doing, they're obviously discriminating or not hiring
2 Veterans; correct?

3 A Correct.

4 Q So you're familiar with the, I guess the term
5 circumstantial evidence and circumstantial evidence through
6 your work. Here in this courtroom, and I don't know whether
7 you noticed or not, circumstantial evidence and direct
8 evidence have the same weight. You can consider them for the
9 same weight. So you'll be able to, if you can make that
10 inference and make a reasonable inference that you can draw,
11 you can do that; correct?

12 A Correct.

13 Q Is there anything that would prevent you over the
14 next say two or three weeks from serving as a juror in this
15 case? I know you, you're obviously busy with your work. But
16 is there anything pressing at work or even at home that would
17 prevent you from serving as a juror?

18 A No. I would be able to.

19 Q Okay. Your, was it your cousin that was involved in
20 a crime back about 30 years ago?

21 A Right.

22 Q That doesn't play any role in your determination
23 today?

1 A No.

2 Q Of this case?

3 A No. I didn't even know about it until a couple
4 years ago.

5 Q Really? Okay. Is there anything that you feel that
6 you need to advise us of that, any questions you have or any
7 concerns you have going into this process?

8 A No. I think you've cleared up some stuff for me by
9 what you said.

10 Q And you feel that you could serve as a fair and
11 impartial juror in this case? You won't let the influences
12 of whatever media you've read influence your decision;
13 correct?

14 A That's correct.

15 Q You can decide this case without sympathy to either
16 party, the deceased or the Defendant; correct?

17 A Correct.

18 Q And you believe that you will give her the benefit
19 of the doubt and proof beyond a reasonable doubt? You'll
20 hold the State to its burden of proving this case in both
21 phases if we get to that second phase by proof beyond a
22 reasonable doubt; correct?

23 A I could do that.

1 Q And if the facts warranted it and the law permitted
2 it, you could sign a verdict imposing the death penalty in
3 this case; correct?

4 A I could also do that.

5 MR. BECKER: Thank you very much.

6 MR. INGRAM: Thank you, Your Honor.

7 EXAMINATION

8 BY MR. INGRAM:

9 Q Good morning, Mr. Patterson. Are you doing all
10 right up there? Do you need some water or something?

11 A No, I'm fine. Thank you.

12 Q John Juhasz and I share the responsibility of
13 representing Donna Roberts who's on trial for her life. As
14 you can imagine, we take our responsibility very seriously.
15 We feel that we should take every reasonable precaution in
16 selecting a fair-minded jury, the same type of jury that you
17 or I would want if we were on trial. Does that sound fair
18 enough to you?

19 A That sounds fair, sure.

20 Q This is a lot like a job interview, except when you
21 apply for your job with the Veterans Department you chose to
22 go apply for that position. Here the jury wheel sort of spun
23 your name out and chose you and we summoned you to come.

1 We are interviewing you today for one of the most
2 important jobs there is: The job of finding the truth and
3 determining the fate of another human being.

4 Now, I understand from your conversation with
5 Mr. Becker that the responsibilities which we are asking you
6 to undertake do not pose a problem for you?

7 A I don't believe they do, no.

8 Q How do you feel about being asked to assume such
9 responsibilities?

10 A I think it's very, very important. And whenever you
11 said, it's probably the most important thing that I could be
12 doing, I was actually off of this jury at one time but I put
13 myself back on. So I looked at it as a privilege to be here.

14 Q I candidly, I have to tell you that some of your
15 answers in the questionnaire interest me a great deal. We're
16 going to talk about some of those answers. You studied
17 criminal justice at YSU?

18 A Right.

19 Q And when asked in the questionnaire about problems
20 with the justice system one of the things that you noted was
21 that the system is embedded in tradition?

22 A Uh-huh.

23 Q And I assume by that that we are so embedded in

1 tradition that sometimes it's a problem in your mind?

2 A Occasionally, right.

3 Q Do you believe in the American jury system?

4 A Yes.

5 Q And you understand that the American jury system
6 only works when we can get 12 good people to come in here,
7 give of themselves, give of their time and fairly determine
8 the cause before them?

9 A That's reasonable, sure.

10 Q And it will only work if people tell us whether they
11 will have a problem giving either side a fair shake.

12 A Right.

13 Q In a nutshell, this case boils down to the
14 Government's allegation that Donna Roberts plotted or
15 conspired with a male companion, Nate Jackson, to cause the
16 death of Robert Fingerhut.

17 Donna and Robert were divorced. They continued to
18 work with one another at the Greyhound Bus Station in
19 Youngstown and Warren and continued to live with one another
20 in Howland Township.

21 Now, you understand that this trial is about the
22 guilt or innocence of one person and one person only, and
23 that person is Donna Roberts?

1 A Yes.

2 Q Throughout the course of these proceedings you'll
3 hear the name Nate Jackson. And shortly into these
4 proceedings you very well may conclude that Nate Jackson did
5 what the State says he did.

6 A All right.

7 Q You're here to determine whether Donna helped him or
8 not. You have that straight?

9 A Okay. I've got it.

10 Q Now, in its allegation that Donna participated in
11 the death of Robert, the State will introduce various tape
12 recordings and various letters written between Donna and Nate
13 Jackson. Some of those are sexually explicit in nature and,
14 to be honest with you, some of them are downright offensive.
15 You understand that the allegation here is murder, not loose
16 morality?

17 A Right.

18 Q So no matter how shocked or offended you may be by
19 the sexual nature of some of this evidence, your job
20 responsibility is still going to require you to test that
21 evidence to determine whether it ties Donna to this offense.
22 You got that?

23 A Right.

1 Q Now, Donna denies that she participated by
2 conspiracy, plot or otherwise in the death of Robert
3 Fingerhut. Would you have any problem whatsoever giving a
4 scarlet woman a fair trial?

5 A No, I don't believe so.

6 Q Would you have the courage to acquit, that is vote
7 not guilty if you thought a not guilty verdict was warranted
8 by the evidence?

9 A I could do that.

10 Q Would you agree with me that whatever we see, read
11 or hear may leave impressions upon us?

12 A Sure.

13 Q And you talked with Mr. Becker about pretrial
14 publicity. And he asked you if you had any opinions. And I
15 believe your response was, not really.

16 A That was it.

17 Q First off, can you tell me everything you remember
18 seeing, reading or hearing about this case, Nate Jackson or
19 the death of Robert Fingerhut?

20 A Okay. I, I did see it on the news. I remember
21 seeing him in trial and being sentenced. I believe I saw
22 Miss Roberts, too, a picture of her on the news. Then I read
23 one newspaper article in the Tribune on it.

1 Q When did you read the article in the Tribune? A
2 long time ago?

3 A Quite a while ago, right. Quite a while ago.

4 Q You saw or read about Mr. Jackson being sentenced,
5 so you obviously know he was convicted?

6 A Right.

7 Q The fact that Mr. Jackson was convicted, does that
8 lead you to form any impression as to whether or not Donna
9 was involved with Mr. Jackson?

10 A No. I mean, I have no idea.

11 Q Okay. And that's what you're here to test; right?

12 A Right.

13 Q You saw or heard about Mr. Jackson's sentencing. Do
14 you know what the sentence was?

15 A I'm not sure.

16 Q Would you agree with me that whenever we're called
17 upon to decide a sentence, we should know something about the
18 person we're sentencing?

19 A Yes.

20 Q So to some extent sentencing should be an
21 individualized process and focused upon the person being
22 sentenced; am I correct?

23 A And the evidence.

1 Q You made the orientation instruction Tuesday,
2 April 8th down at the other end of the hallway here?

3 A Yes, I did.

4 Q Where were you in the courtroom? When you walked in
5 the door did you go to your left or to your right?

6 A I went to the left.

7 Q Were you seated or standing?

8 A I was seated.

9 Q While you were there, did you hear any discussions
10 about this case at all?

11 A No.

12 Q One last thing about newspapers or TVs. You know,
13 if we wanted to try people by way of the newspaper or by way
14 of the TV news there would be no need, no need for
15 courthouses. We could just give some people a telephone and
16 say, hey, call this number and let us know. And that
17 wouldn't be right. That wouldn't be fair; do you agree with
18 that?

19 A I agree with that.

20 Q Even the jurors who are selected are going to be
21 told that they have to keep an open mind, that is not form
22 any impression about the facts of this case until it's over.
23 Let me try to explain the reason for that.

1 If early on, let's say the first witness testifies
2 and you assume, based on that juror's testimony, let's say
3 the car was red. That might prevent you from objectively
4 listening to other evidence as the case unfolds from witness
5 three, four and five that the car wasn't red, it was blue.
6 The car wasn't red, it was green. You get me?

7 A Right.

8 Q You can't form any impressions until the entire case
9 is over. Now that's probably a hard thing to do. So all I
10 can ask you, will you do your best to do that?

11 A I will do my best to do that, right.

12 Q You would be told that you're not allowed to discuss
13 this case with your fellow jurors until it's over. And I
14 think that's also a hard thing to ask of jurors. And the
15 reason I think it's hard is, there's going to be 12 of you up
16 here and, in all likelihood, you don't know one another. So
17 the only thing you're going to have in common is what you see
18 here, what you hear here. And because that's what you have
19 in common it's sort of natural to discuss what you have in
20 common. We ask jurors to resist that natural temptation to
21 discuss the case. And it's very important that you do that.
22 And, again, will you do your best?

23 A I would do my best. And I also have to do that in

1 my investigative work, I can't discuss what I'm doing with
2 anybody else.

3 Q You also act as mediator sometimes? In addition to
4 investigations, do you on occasion try to mediate or resolve
5 differences between the claimant and the employer?

6 A Yes.

7 Q I have to talk to you about your feelings regarding
8 the death penalty and life imprisonment as sentencing
9 options. But before I go there I want to explain a concern I
10 have. I'm afraid that you may conclude that because we're
11 all up here talking to you about punishment that we're
12 predicting that you're going to have to decide the issue of
13 punishment.

14 Do you understand, we're lawyers, we're not fortune
15 tellers. We're not making such a prediction; do you
16 understand that?

17 A You do talk about punishment a lot.

18 Q And in your studies at -- I like that answer
19 because it's a truthful answer. In your studies at YSU, did
20 you study anything about the effects of the death
21 qualification process in criminal cases?

22 A Boy, I really don't remember. That was back in
23 '70-71.

1 Q To me asking you questions now about punishment is a
2 lot like putting the cart before the horse. I don't think we
3 should be talking to you about punishment now. I think we
4 should be talking to you about guilt or innocence now and
5 only guilt or innocence. But the law requires that we ask
6 you these questions at this time.

7 These questions have nothing to do with the guilt or
8 innocence of Donna; do you understand that?

9 A Okay.

10 Q And even though we're talking to you about
11 punishment, as she sits there she is presumed innocent. You
12 got that?

13 A I've got that.

14 Q And your oath as a juror will require you to presume
15 her innocent as we start these proceedings even though you're
16 being asked all these questions. Can you do that?

17 A I can do that.

18 Q And do you understand you may never even have to
19 consider the issue of punishment?

20 A Right.

21 Q Because if during the first phase of these
22 proceedings you and the rest of the jurors find Donna not
23 guilty, what happens?

1 A It's done.

2 Q It's done. We pack up our bags and we go home. So
3 as odd as it sounds, we're asking you hard questions about a
4 difficult issue that you may never have to determine. Only
5 lawyers can do that, huh?

6 A I guess.

7 Q Every morning when you go to work, put your seat
8 belt on?

9 A Absolutely.

10 Q You don't expect to be in an automobile accident,
11 you put it on just in case; right?

12 A Just in case.

13 Q I don't expect to get to a second phase, but we have
14 to ask you these questions now just in case.

15 A Okay.

16 Q How do you feel about life imprisonment as an
17 alternative to the death penalty?

18 A I'm not sure if I was in that position would I
19 rather have, to be truthful with you.

20 Q I understand that answer.

21 A I almost in certain instances I guess I would want
22 the death penalty over going to prison for life. But I hope
23 I'm never in that situation.

1 Q And I understand from your questionnaire that you --
2 I'm talking about your personal beliefs now. We'll talk
3 about whether your personal beliefs interfere with your
4 ability to follow the law if we have to later. Does that
5 sound fair?

6 A Sure.

7 Q You believe that capital punishment is necessary to
8 eliminate certain people from society, mainly as a way to
9 ensure that they don't repeat violent actions?

10 A Correct.

11 Q And in making that determination I assume that you
12 would want to look at the history of the person?

13 A Correct.

14 Q In order to determine if there's a likelihood of
15 repetition; am I right?

16 A That's correct; right.

17 Q Then in response to another question -- and the more
18 I talk to people here and the more I read this question, I'm
19 beginning to conclude that the question was inartfully
20 written, which actually pangs me because I may have written
21 it.

22 In response to a question, "State whether you
23 believe that certain crimes should require a sentence of

1 death." Your answer is, yes, I do believe that certain
2 crimes should require a sentence of death. And those crimes
3 would be premeditated offenses which are violent and affect
4 the victim's quality of life.

5 A Correct.

6 Q Well, just about all murders are violent and affect
7 quality of life; right?

8 A Right.

9 Q This is a question that Mr. Bailey used to ask years
10 ago and I'm going to steal it from him. Thanks, Ken.

11 If you were rewriting the laws for the state of
12 Ohio -- we got rid of the Legislature and Kevin Patterson is
13 a Legislature of one. And you had to write the punishment or
14 punishment for murder, premeditated, planned murder, you got
15 me so far?

16 A Got you.

17 Q What penalty or penalties would you include in your
18 sentencing scheme?

19 A I think probably the penalties that were given to me
20 by Judge Stuard, because I really didn't understand until I
21 started to read that stuff and he went over that that, that
22 was even a -- that there were even options. I knew the death
23 penalty, that was it.

1 Q Do you think you have a handle on the four options
2 or would you like me to go over them?

3 A I think I've got a good handle on them.

4 Q So at this time if you were writing the sentencing
5 statutes for the state of Ohio you would include as
6 sentencing options in aggravated murder cases: death, life
7 without parole and then life without parole until certain
8 points of time?

9 A Yes, correct.

10 Q Is there any offense for which you think the death
11 penalty should be automatic? In other words, that if you're
12 convicted there's no options, you go to death?

13 A I would have to say premeditated murder, you know,
14 or something with premeditation, planned out, violent.
15 Violent act I would still say that, right.

16 Q You have me a little confused, or I have myself a
17 little confused. I have a long history of confusing myself.
18 Forgive me. And let's see if I can work through this.

19 We just talked about you rewriting the laws for the
20 state of Ohio. And we're talking now about rewriting the
21 penalties for premeditated murder.

22 A Okay.

23 Q Would you only have one penalty for premeditated

1 murder, the death penalty? Or would you have other options?

2 A I think you could have other options, depending upon
3 all the circumstances.

4 Q Let's forget about rewriting laws for a minute. For
5 someone in your personal belief system what is the
6 appropriate penalty for someone who has been convicted of
7 premeditated murder?

8 A That would be the death penalty.

9 Q And that's the way you honestly feel about that
10 issue?

11 A That's correct, right.

12 Q What I need to know from you only you can tell me.
13 And before I ask you the question, you've been told there are
14 no right or wrong answers in this dialogue.

15 A That's right.

16 Q There is, however, a mistake that you can make. And
17 the mistake is, if instead of telling me how you honestly
18 feel you tell me what you think I want to hear so I won't
19 bother you anymore.

20 A Okay.

21 Q And don't do that, okay?

22 A I won't do that.

23 Q In light of your feeling that in cases of

1 premeditated murder the penalty should be death.

2 A That's correct.

3 Q In light of that, if you had to decide a penalty in
4 a premeditated murder case, would the death penalty start
5 with a leg up?

6 A No, I don't think so, no.

7 Q Would your feelings regarding the appropriateness of
8 the death penalty in premeditated murder cases pose a problem
9 for you in fairly considering the life sentence alternatives?

10 A No, I don't believe it would.

11 Q Just a couple more questions and I'm going to get
12 off this issue. A capital juror who has reached a second
13 phase -- you understand where I'm at here?

14 A Right, right.

15 Q The oath of that juror would require that the juror
16 fairly and equally consider four sentencing options: death;
17 life without parole; life without parole until serving 30;
18 life without parole until serving 25. The oath would require
19 that the juror equally consider all four of those options.
20 If you had to decide the issue of penalty, can you fairly and
21 equally consider all four of those options?

22 A I think I could honestly do that, yes.

23 Q You understand that your oath would require that one

1 of those cannot have a headstart over the other?

2 A Right.

3 Q And if you ever get to that point where you have to
4 decide punishment you would be sitting here, and the first
5 thing a defense lawyer is going to say to you is, remember,
6 folks, you all promised to fairly and equally consider the
7 four sentencing options. So if your personal view is going
8 to pose a problem for you in that respect now is the time to
9 tell us. And I'll accept your answer, whatever it is.

10 A No, I think I can make a decision on the evidence
11 and consider it.

12 Q Thank you. Now, in a made up second phase -- we're
13 at a second phase not in this case, in some other case.
14 Before you could ever vote for death the state of Ohio would
15 have to convince you beyond a reasonable doubt that the
16 aggravating circumstances, bad things, outweigh mitigating
17 factors, positive things that can be said about the
18 defendant; do you understand that?

19 A Right.

20 Q So it would be the State's burden to prove to you
21 beyond a reasonable doubt that the death penalty was the
22 appropriate penalty. Will you hold them to that burden if
23 you have to decide the issue of penalty?

1 A I could do that.

2 Q Do you understand that any reasonable doubt as to
3 the appropriateness of penalty, as to the appropriateness of
4 the death penalty would require one of the life sentence
5 options?

6 A Right.

7 Q When you were talking with Mr. Becker about getting
8 to a second phase, I believe he told you that you couldn't
9 get to a second phase unless you found the Defendant guilty
10 beyond a reasonable doubt on the charge of murder. Do you
11 recall that discussion with him?

12 A Yes.

13 Q Well, there would have to be a verdict of guilty on
14 a charge of aggravated murder and additionally there would
15 have to be a verdict of guilty on a death specification, so
16 the State would have to meet its burden on both of those
17 things. And the Judge will explain that later. But do you
18 think you have a preliminary understanding of it?

19 A Yeah, a basic understanding.

20 Q Have you ever donated any time, money or services to
21 a political campaign or issue?

22 A A political campaign?

23 Q Yes.

1 A Yeah, a little bit of money.

2 Q Do you mind if I ask you what the campaign was?

3 A No. The presidential campaign, Political Action
4 Committee. Our union puts into it.

5 Q Do you belong to any group or organization which is
6 active in any political matter? Obviously your union.

7 A Right.

8 Q The Veterans, they're active, aren't they?

9 A Somewhat. The Veterans organizations are, yes.

10 Q Any other groups which are active in any political
11 manner?

12 A None at all.

13 Q In the last five years or so have you signed a
14 petition on any public issue?

15 A Probably, but I don't remember what it was.
16 Somebody coming around the neighborhood for something
17 probably. Nothing of real relevance or importance.

18 Q Do you belong to or associate with any group which
19 has crime prevention or law enforcement as a goal, like a
20 neighborhood block watch group or MADD Mothers against --

21 A No, no.

22 Q In the justice problem answer in your questionnaire
23 you note that there is too much crime and not enough

1 financial or state resources.

2 A That's my opinion.

3 Q Well, it's probably right on. But it leads me to
4 another question, if it's okay with you. What resources do
5 you think are needed?

6 A I don't think there probably are enough resources.
7 I mean, I think this is the best system going. It's what we
8 have. You probably couldn't build enough courthouses and get
9 enough people going fast enough to move everyone. There's
10 probably not enough money.

11 Q What do you think we need more of, courtrooms?
12 Prosecutors? Education?

13 A That's a real good question. I really don't know.
14 I really don't have the answers to what makes it better.

15 Q And I should take a step back and tell you that I
16 understand that some of the questions that I'm asking you are
17 hard questions. And I would like you to understand that if
18 we just changed roles for even a couple of minutes and you
19 took this notebook and paged through it and said, this is a
20 good one, let me ask him that. They would be hard questions
21 for me to answer.

22 A Sure.

23 Q I guess I apologize about that. But the goal here

1 is for all of us to get to know as much about you in a short
2 period of time. So it's a necessity to ask some hard
3 questions.

4 A Sure.

5 Q So here's another one. We obviously have a crime
6 problem in this country, don't we?

7 A I agree.

8 Q Do you have any idea what we -- and by "we" I mean
9 society as a whole, might be able to do to at least begin
10 addressing that problem?

11 A Not at this point in my life, no. I really don't
12 know.

13 Q As Mr. Becker told you, sympathy has no role in this
14 courtroom. This is a court of law, not a court of sympathy.

15 A Yeah.

16 Q And you told Mr. Becker that you wouldn't let
17 sympathy effect your deliberations; right?

18 A That's what I said, right.

19 Q Well, you may find that that's easier said than
20 done. So I want to spend just a few minutes on it. We have
21 Donna here, and you may feel sympathy for her. But feeling
22 sympathy for the Defendant should not effect your
23 determinations. Are we square on that?

1 A Right.

2 Q On the other hand, we have a victim here who lost
3 his life. It's only natural to feel sympathy for
4 Mr. Fingerhut. And by the same token, sympathy for
5 Mr. Fingerhut should not effect your evaluation of the
6 evidence; do you agree with that?

7 A Correct.

8 Q And then back to asking jurors to do hard things.
9 You're going to see evidence, pictures, photos that will
10 evoke an emotional response from you. Maybe sympathy. Maybe
11 anger. You're going to see photographs, wounds, maybe point
12 blank to the, close to Mr. Fingerhut's head. There may be
13 coroner's photographs. They may be enlarged. Crime scene
14 photographs. Some of that evidence may evoke an emotional
15 response from you. And whether that emotional response is
16 sympathy or anger, you're still going to have to test that
17 evidence to determine whether it ties Donna to this offense.
18 Will you do that?

19 A I think I can do that.

20 Q And you see why I say it might be, might be harder
21 done than said?

22 A Absolutely.

23 Q In the orientation instruction on Tuesday, April 8th

1 the Judge talked to you about the presumption of innocence.
2 Mr. Becker, in his conversation with you, talked to you about
3 the presumption of innocence.

4 How do you personally feel about this rule of law
5 which requires that jurors presume a defendant innocent?

6 A I've never known anything else in the justice
7 system. I mean, that's what has been ingrained in me.

8 Q And we've had such rules, such traditions since the
9 days of the revolution. That's one of the things that we
10 fought for. Not all countries do it the same way. As a
11 matter of fact, there's only a couple that do it this way.
12 And the only ones I can think of off the top of my head are
13 us and Great Britain.

14 I eat breakfast and lunch sometimes at a place in
15 Youngstown called the Newport Deli. It's a small
16 delicatessen. And the people there, the people that own it
17 are friends of mine. They -- remember the crime problem we
18 talked about a little bit ago?

19 A Right.

20 Q In order to deal with this crime problem, Doug and
21 Ceas proposed to do away with the presumption of innocence
22 and replace it with a presumption of guilt. They believe
23 that defendants should be required to prove their innocence.

1 And they're certainly entitled to feel that way. But they
2 probably wouldn't make good jurors in a criminal case in this
3 country; do you agree with that?

4 A I would agree with that.

5 Q Your imbedded-in-tradition comment in your
6 questionnaire is what led me to this issue.

7 Is that one of the traditions you think we're
8 embedded with that maybe we should consider changing?

9 A I don't see how you could change that, no.

10 Q You understand that your oath would require you to
11 presume Donna innocent?

12 A Right, correct.

13 Q If Lisa or Shelly were accused of some act of
14 wrongdoing by a neighbor, by a teacher, and you honestly in
15 your heart felt that they didn't do what they were accused of
16 doing wrong, you would require evidence that they did it
17 before you would be willing to change your mind, wouldn't
18 you?

19 A That's right.

20 Q Well, you're presuming your daughter is innocent
21 under those circumstances?

22 A Right.

23 Q Donna is entitled to the same presumption.

1 A Okay.

2 Q Can you afford it to her?

3 A I can do that.

4 Q And because of the presumption of innocence, the
5 burden of proof in this case is solely and exclusively on the
6 state of Ohio, these fellows right here. Basically it's time
7 to put up or shut up. You've leveled these allegations, now
8 try to prove them; you understand that?

9 A Yes.

10 Q We don't have to do anything over there. Remember
11 Mr. Becker talking to you about a glass?

12 A Right.

13 Q I guess that glass, there's a name for that glass
14 and that's proof. And they have to fill that glass up to
15 proof beyond a reasonable doubt. And that's their burden.
16 So if Mr. Juhasz and I sit over here and we sleep, or we sit
17 on our hands, we haven't added anything to that glass, have
18 we?

19 A No.

20 Q It's their duty to fill it up. Will you hold them
21 to their duty of filling that glass up?

22 A I can do that.

23 Q And it's also their duty to fill that glass up if we

1 ever get to a second phase. Will you require a full glass at
2 a second phase if we ever get there?

3 A I can do that, too.

4 Q You understand that Donna is on trial for murder,
5 not for being a woman of loose moral character. And while
6 they may prove she's a woman of loose moral character, the
7 State's burden is to prove that Donna intentionally
8 participated in the death of Robert Fingerhut. Are you going
9 to hold the State to that burden?

10 A I can do that.

11 Q The Judge is going to talk to you about essential
12 elements. Do you remember studying those back in the '70s at
13 YSU?

14 A Some. Not much.

15 Q Well, they're simply necessary ingredients. He'll
16 tell you what they all are. There's two aggravated murder
17 charges. Purpose is an essential element. And the Judge
18 will tell you that purpose is the same as intent. A person
19 acts purposely if it is his or her intention to cause a
20 specific result. Are you with me?

21 A Okay.

22 Q Would you agree that the facts and circumstances
23 surrounding an act can shed light on the actor's intent?

1 A Yes.

2 Q For instance, if I go out there and commit some kind
3 of wrongdoing, would you expect me to try to cover my tracks
4 or to leave a paper trail?

5 A Cover your tracks.

6 Q If I go out there and purposely engage in some
7 wrongdoing, would you expect me to do it openly in the light
8 of day or to try to do it secretly at night?

9 A Maybe secretly at night.

10 Q There's another charge, aggravated burglary. That's
11 the third count of the indictment, but it's also the first
12 death specification. You think you understand that?

13 A Could you explain that a little bit?

14 Q Sure. The first two counts of the indictment are
15 aggravated murder charges. One is causing the death of
16 another with prior calculation and design. There are other
17 elements, but basically that's the premeditated murder which
18 is now prior calculation and design.

19 There's another aggravated murder charge, which is
20 causing the, causing the death of another, purposely causing
21 the death of Robert Fingerhut while committing aggravated
22 burglary or aggravated robbery. That's felony murder. The
23 State is entitled to plead both of those sort of like

1 alternative pleadings. There's one death but there's two
2 theories.

3 A All right.

4 Q Each of those charges have two death specifications.
5 The first death specification is that the murder was
6 committed during an aggravated burglary. And then there are
7 some other things, but I think that should suffice for now.
8 And then the second death specification is that the murder
9 was committed during an aggravated robbery. Is that a little
10 better?

11 A Yeah, that's better.

12 Q And remember when we talked about, you can only get
13 to a second phase if you returned a verdict of guilty on an
14 aggravated murder charge and a death specification, that
15 would be one of those two specifications?

16 A Okay.

17 Q The Judge will define aggravated burglary to you.
18 And he'll tell you that it requires a trespass, to enter or
19 remain upon the land or premises of another. Will you hold
20 the State to their burden of proving that?

21 A Yes.

22 Q And then aggravated robbery is while committing or
23 attempting to commit a theft offense, someone had a deadly

1 weapon on their person. That's basically the essential
2 elements of aggravated robbery. And a theft offense
3 necessarily involves the taking or an attempt to take the
4 property of another.

5 A Right.

6 Q Will you hold the State to proving an intended theft
7 offense?

8 A Yes.

9 Q Donna Roberts doesn't have to testify in this case.
10 Whenever you were called upon to resolve a dispute between
11 your two girls, I bet the first thing you said to them is,
12 okay, you sit there and you sit there. I want to hear both
13 sides of the story.

14 A Right. Sometimes.

15 Q Other times you didn't have to hear both sides?

16 A I didn't have to hear anything.

17 Q The black eye was staring you right in the eye?

18 A Right.

19 Q Most jurors candidly would like to hear what a
20 defendant has to say; we can agree on that, can't we?

21 A Right.

22 Q Well, sometimes your oath as a juror will require
23 you to put aside that natural inclination. And let me try to

1 explain. Remember Mr. Becker's glass?

2 A Right.

3 Q If Donna Roberts sits here and elects not to
4 testify, that doesn't add anything to the glass; do you
5 understand that?

6 A Okay.

7 Q If she elects not to testify, you cannot consider it
8 for any purpose.

9 A Okay.

10 Q How do you feel about that?

11 A You have to follow that. I mean, that's the rule.

12 Q Yeah, it is a rule. Is it a rule that you might
13 have a problem following?

14 A I could follow it. If you're asking me, do I agree
15 with it?

16 Q Yes. Do you agree with it?

17 A Not really, no.

18 Q Fair answer. If we try this case and Donna elects
19 not to testify, will that trouble you?

20 A It wouldn't trouble me, no.

21 Q So your personal feeling is something that you can
22 set aside?

23 A Absolutely.

1 Q That's one of those hard things that we ask jurors
2 to do.

3 A Absolutely.

4 Q And how you feel is, I think, only natural. And to
5 be candid with you, I think 95 out of 100 jurors that we talk
6 to feel the same way.

7 Now, the flip side of that is that if Donna does
8 testify she's a witness just like any other witness. You
9 would have to use the same rules or standards for judging her
10 credibility as you use for judging the credibility of other
11 witnesses.

12 A Okay.

13 Q There's not a separate standard for her. The
14 standard that you judge the witnesses by should be uniformed.
15 They should be the same. And the Judge will tell you that.
16 Do you agree with that?

17 A That's fine.

18 Q Let's be fair about this. She's the Defendant here,
19 isn't she?

20 A Correct.

21 Q So that gives her an interest or a stake in the
22 outcome?

23 A Surely.

1 Q And that's one of the things the Judge is going to
2 tell you that you can consider and believe in someone. And
3 even if he didn't tell you that, that's one of the things we
4 would naturally consider in believing someone, isn't it?

5 A Sure.

6 Q So if we're going to do it uniformly, we apply that
7 to her and then we apply it also to each and every witness
8 that testifies. Will you do that?

9 A Yes, I can do that.

10 Q And he's going to give you a whole list of things
11 about credibility. You can believe all of what someone says,
12 none of what someone says, part of what someone says. You
13 determine the truth. He's going to give you factors. And
14 he'll list those for you. And I just gave you one example:
15 interest or stake in the outcome.

16 Another one is reasonableness of testimony. If
17 someone testifies and it just doesn't make sense to you,
18 that's something you would want to consider, isn't it?

19 A Yes, it would be.

20 Q But he's going to give you another factor that is
21 called the test of truthfulness that you use in your every
22 day life. Over the course of years you will have frequently
23 had to determine whether someone, whether the girls, whether

1 a claimant, whether an employer was telling you the truth or
2 not or trying to hoodwink you?

3 A Right.

4 Q And over the years I imagine you've developed a
5 sixth sense or an intuitive sense to assist you in making
6 those determinations?

7 A Correct.

8 Q Well, you're not supposed to leave that sixth sense
9 at the courtroom door. We want you to bring it in here and
10 apply it to everyone that testifies. Will you do that?

11 A I can do that.

12 Q Did you ever hear of the old saying, where there's
13 smoke there's fire?

14 A Right.

15 Q Well, the fact that Donna Roberts has been indicted
16 is not evidence and should not be considered as such; do you
17 understand that?

18 A I do now, right.

19 Q Let me explain why. Mr. Becker I think did a pretty
20 good job of it, so I'm going to be short unless you want me
21 to slow down.

22 There's no judge there in a grand jury. The
23 Defendant is not there. Her lawyers aren't there. The

1 evidence isn't tested. It's a one-side thing. The only
2 person that's there besides the grand jurors are, is the
3 prosecutor. So it just wouldn't be fair to hold that against
4 someone. It would be like using secret evidence; do you
5 agree with that?

6 A Correct.

7 Q Now, this indictment is going to be read to you or
8 referred to throughout the course of these proceedings. What
9 I want you to understand is that there is no point in time at
10 which it is magically transformed into evidence. It's not
11 evidence now. It's never evidence. Do you understand that?

12 A Okay.

13 Q Do you think -- do you want to talk anything about
14 the grand jury process?

15 A No. That's pretty good.

16 Q Reasonable doubt is a doubt based on reason and
17 common sense. Did you ever say to yourself, I'm going to
18 give, I'm going to give one of my girls the benefit of the
19 doubt? Did you ever say that to yourself?

20 A Right.

21 Q Well, you never said, I'm going to give her an
22 unreasonable doubt, did you?

23 A No.

1 Q We intuitively know what's reasonable or what's
2 unreasonable, don't we?

3 A Right.

4 Q The Judge will tell you that proof beyond a
5 reasonable doubt requires that you be firmly convinced of the
6 allegations, and is proof of such character that an ordinary
7 person, you or me, would be willing to rely and act upon it
8 in the most important of our own affairs. Firmly convinced,
9 rely upon in the most important of our own affairs.

10 Now, you made important decisions in your life,
11 haven't you?

12 A Yes.

13 Q And sometimes when making important decisions we
14 make a checklist either in our mind, and sometimes people do
15 it on paper. You put a line down the middle, you write the
16 pros, good things over here, negatives, bad things over here.

17 Let's say it's buying a house. You write
18 everything. Love the house. Enough bathrooms. Good school
19 district. The negatives: It's an old house. I don't know
20 about the structural stability. The plumbing looks a bit
21 shaky to me. And I just don't know if I can cut the mortgage
22 payment.

23 So you investigate those negatives, or at least I

1 do, because if I can strike those negatives off, then I can
2 say that I'm firmly convinced that's the right thing for me.
3 So I call the plumber and say, hey, listen, check out these
4 pipes. How expensive is it going to be? He tells me it's a
5 couple hundred bucks. I can scratch that negative off;
6 right?

7 A Right.

8 Q The structural stability. I call a contractor and
9 say, hey, listen check out this foundation for me. I'm a
10 little bit worried about it. I want an inspection. He says,
11 this house is brick solid. So I strike that one off.

12 I go to the bank, I talk to my banker about interest
13 rates. I talk to my banker about the term of the loan. And
14 no matter how much I deal with the, whether I can afford the
15 payment question, it remains reasonable in my mind. I don't
16 know whether I can do it.

17 A Right.

18 Q I still have one negative that is reasonable, and if
19 I still have one negative that is reasonable I cannot say
20 beyond a reasonable doubt that that decision is the right
21 thing for me; do you understand that?

22 A Right.

23 Q That's the same thing in this case. If you have one

1 solitary reasonable doubt the State has not met its burden of
2 proof.

3 A Okay.

4 Q Now, Mr. Becker talked to you about circumstantial
5 evidence. And you'll be glad to know I'm just about done.
6 Circumstantial evidence is proof of a fact by direct
7 evidence, what someone saw, heard, felt, from which you can
8 infer something else. You got a handle on that?

9 A Right.

10 Q Basically it's proof of one fact and you are then
11 asked to make a leap in logic. Does that sound reasonable?

12 A Right.

13 Q So the first thing you want to do if you're asked to
14 make a leap in logic is to test that leap to see if it's
15 reasonable; right?

16 A Right.

17 Q Because it's a leap. If the leap is not reasonable
18 you don't want to make it; right?

19 A That's correct.

20 Q And we talked about your girls when they were, may
21 have been accused of wrongdoing and you presumed them
22 innocent.

23 In that situation if you were asked to make

1 inferences on circumstantial evidence, do you think you would
2 look for other inferences that you could make that maybe
3 didn't point to wrongdoing that were equally reasonable?

4 A Sure.

5 Q Will you do that here?

6 A Right.

7 Q And would you agree with me that circumstantial
8 evidence is like a chain; it can only be as strong as its
9 weakest link?

10 A That's a fair assumption.

11 Q So with circumstantial evidence I guess you got to
12 look for weak links. Will you do that?

13 A I can do that.

14 Q Now, one example, there's a danger when you start
15 piling inferences on inferences. And that's tough, so let me
16 try to explain this.

17 It's the middle of winter. It's Sunday morning and
18 I want my newspaper. So I'm upstairs. I've got a cigarette
19 in one hand, a cup of coffee in the other hand. I look out
20 the window and it had snowed the night before. And I see
21 footprints in the snow from my neighbor's house on one side
22 to my doorway, and from my doorway to the neighbor on the
23 other side. Now, I didn't see anybody walk across that snow,

1 but I can infer someone did; correct?

2 A Correct.

3 Q And that's a pretty good inference, isn't it?

4 A Not bad.

5 Q Well, I also infer that it was my paperboy. So
6 what I'm doing is I'm piling an inference on an inference
7 here; correct?

8 A Right.

9 Q Until I go down and open my door, expecting to see
10 my paper and it's my Giant Eagle coupons. So you've got to
11 test these inferences. And when you start piling an
12 inference on an inference you got to really test them. You
13 got me?

14 A Yeah.

15 Q Now that I've taken up so much of your time and
16 attention, has anything popped into your mind while you were
17 talking with me or Mr. Becker that you would like to discuss
18 with the Judge or any of us?

19 A No, not really. I think I've got some questions
20 answered here today.

21 Q Do you have any questions left that have not been
22 answered?

23 A Pardon me?

1 Q Do you have any questions left that have not been
2 answered?

3 A No, sir.

4 Q Thank you very much, sir. Have a pleasant day.

5 A You're welcome.

6 THE COURT: Pass, or do you wish to
7 approach?

8 MR. JUHASZ: Pass.

9 MR. INGRAM: Pass.

10 MR. BECKER: Pass.

11 THE COURT: Very good. Mr. Patterson, you
12 will be in the poll from which this jury is selected. I
13 would ask you to call that number given to you after 4:30
14 Friday for further instructions. Probably sometime next week
15 we'll be picking the jury on this. You'll be notified when
16 to return.

17 I would again remind you not to discuss anything
18 about the case. You should not read anything in the
19 newspaper, watch anything on TV until you return. We thank
20 you very much for your participation. Thank you. We're
21 going to take a break now.

22 (Whereupon, a recess was taken.)

23 * * *

1 WHEREUPON,

2 MARSHA J. DANADIC

3 being first duly sworn, according to law, was examined and
4 testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q Good morning.

8 A Hi.

9 Q How are you?

10 A I'm okay.

11 Q You read the handout that was given to you?

12 A Yes.

13 Q As you know then, we're here on an aggravated murder
14 case, being two different counts in the indictment,
15 aggravated murder with specifications.

16 Under the law as we have it in Ohio, a person who is
17 found guilty of murder does not necessarily face the death
18 penalty. Legislature has passed a statute that says only in
19 certain circumstances when a person is found guilty of murder
20 do they face the death penalty.

21 This case will begin with picking a jury. And the
22 State will then be called upon to present evidence showing
23 the facts of this matter. They must prove beyond a

1 reasonable doubt each and every element of the crime of
2 aggravated murder and the specifications are true. The jury
3 must find so unanimously before they would be entitled to a
4 finding of guilty. If the State fails to do that then of
5 course this jury would properly return a finding of not
6 guilty.

7 If the State is able to maintain that burden of
8 proof then this matter would go to a second phase. And
9 during that second hearing the State is again called upon,
10 because the burden of proof is always on the State. The
11 Defendant doesn't have to do anything if they care not to, if
12 she cares not to. She has an absolute right to remain
13 silent. And the presumption of innocence is with her until
14 the State, until the State would carry their burden of proof.

15 Now, at the second phase, if we get to that, the
16 State has to prove beyond a reasonable doubt that the
17 aggravating circumstances, which are the reasons why the jury
18 should consider imposing the death penalty, outweigh any
19 mitigating factors. Those would be reasons for the jury to
20 consider why in this particular case the death penalty should
21 not be imposed. And again, the defense need do nothing. The
22 burden is entirely upon the State.

23 It would not be workable to not bring this up and

1 ask questions at this point because if an ordinary jury sat
2 and heard the matter and decided on the aggravated murder
3 portion they got to -- and made a finding of guilty, if they
4 got to the second portion and we had people on there that
5 believe that if you took a life you should lose your own
6 life, that would not be fair to the Defendant. Or if there
7 were people on there that felt under no circumstances would
8 they ever consider imposing the death penalty, then the State
9 couldn't get a fair trial. So this whole thing is geared to
10 find out what your views are.

11 Whatever your views are is perfectly fine. It's
12 just that both sides here need some assurance that all the
13 jurors will be able to follow the law.

14 A Right.

15 Q Okay. Are you nervous?

16 A Yes.

17 Q Please don't be. You've got nice, very good
18 attorneys who will not embarrass you in any way. That's not
19 always true. But these fellows will not.

20 The second area that they might inquire into will be
21 whether you've been subjected to any pretrial publicity.
22 Have you read anything in the newspapers and, if so, has that
23 been fixed in your mind to the point where you would not be

3	A	Right.
---	---	--------

6	A	Okay.
---	---	-------

EXAMINATION

11 Q Good morning, Mrs. -- is it Danadic or Danadic?

20 So we're here to make sure that -- the reason we go
21 for these questions is to make sure that the folks who are
22 selected to serve as jurors in this case could be fair and
23 impartial to both sides, both to the Defendant and to the

1 people of the State. And that's why we ask these questions.
2 Not because we're snoop and we like to pry into your
3 background and opinions and things. Now, and we're not
4 asking you out of any mere curiosity. There aren't any right
5 answers. There aren't any wrong answers. Just open and
6 candid answers about what you think about certain things.

7 And one thing I want to bring out is, under our
8 rules of conduct we're not allowed to have any communication
9 with you outside of the courtroom here today until this case
10 is all over. And it may go into two phases. And if it does,
11 we can't talk to you in between until both phases are over.
12 So if we run into each other out in the hallway or the
13 elevator or restaurant or something, all we're allowed to do
14 is say good morning or good afternoon. And the reason I
15 mention that is, I don't want you to think that we're being
16 antisocial or trying to snub you or something like that.

17 A Okay.

18 Q Now, the first two areas that I want to get into are
19 the areas of publicity and the death penalty. You have some
20 prior knowledge of this case. I believe you watch TV 27 as
21 well as maybe some of the other channels a couple times a
22 week. You don't read any newspapers, I understand; right?

23 A No, not usually.

1 Q Ever?

2 A If I do it's the Ann Landers, that's it. But Ann
3 Landers isn't even in the paper anymore.

4 Q Right. She passed away. It was Ann Landers and, I
5 couldn't keep them straight, and her sister Abigail.

6 Any reason you don't read the newspapers?

7 A I have five kids. I work full time. I just don't
8 have time, really.

9 Q Been there, done that. Now, with what you saw on
10 television, I take it you're aware that, let's see, you had
11 indicated that you were aware of a co-defendant in this case,
12 a fellow by the name of Nate Jackson. What do you recollect
13 about Nate Jackson?

14 A Well, at first I just recognized the name. And I
15 just, I didn't really remember everything about it. I just,
16 I just kind of, I don't even know if he got -- I think he got
17 convicted. I wrote down what I think I know. I mean, I
18 really didn't write, I don't even know if that's true.
19 That's what I think I know.

20 Q Okay. Is there some reason that name rang a bell?

21 A I don't know. Because I, the reason I listen to the
22 news in the morning, I'm a nurse's aide in a nursing home so
23 while I'm getting people up I kick on the TV. And I always

1 watch Channel 4. And I want to watch the weather. And then
2 I can hear, you know, the news. But it's just, I just
3 probably heard it and that's what I -- you know what I mean?
4 It's not anything that ever really I thought it was a big
5 deal because I don't --

6 Q Well, the reason the Judge instructs you once you
7 get in here is, you're not to read the newspapers anymore
8 until the case is all over or watch TV or, because if you
9 hear something coming on you walk out of the room or shut it
10 off.

11 A Right.

12 Q As you look around the courtroom, there's nobody
13 here right now from the media, no newspaper reporters, no TV
14 people. But from time to time they'll pop in. They'll come
15 in with their cameras, the TV people. And they can't film
16 the jurors, but they may film the witnesses or the Judge or
17 the attorneys or the Defendant. Then they'll do a feature on
18 it. And they'll only be here for a couple minutes. And the
19 newspaper reporters, they'll pop in for maybe five minutes or
20 15 minutes or a half an hour or so.

21 But the thing is, they're going to miss everything
22 that happened before they got in here, all the questions and
23 answers. And then they're going to miss everything that was

1 asked and answered afterwards. So because of the nature of
2 their business, they don't intentionally slant things or miss
3 report things, but they have to rush in to print so it's
4 still news.

5 But you may be, if you're picked to sit on this jury
6 you can have somebody save the papers or tape the TV spots on
7 the news. And when the trial is all over you might look at
8 it and say, you know, gosh, I sat in Judge Stuard's court for
9 a week and a half or two trying this case and I remember the
10 testimony. And it's like whoever that reporter was, they
11 must have covered a trial in Judge McKay's court rather than
12 Judge Stuard's court because it's so different from what I
13 recollect. That's because they're not here for the entire
14 trial. So that's why it's so important that you start off
15 here with a blank slate.

16 It's like going back to school with a clean
17 chalkboard. And you get up there and whatever is going to be
18 written on that board is going to be what you hear from this
19 courtroom from the testimony of the witnesses, the evidence
20 that is introduced and the instructions of law given to you
21 by the Judge. And I take it you can do that, you can start
22 out with a clean slate?

23 A Right.

1 Q It may well be that as you hear the testimony you
2 might recollect having heard something on TV before, or maybe
3 on the radio. But you would be able to set that aside and
4 base your decision on what happens here; right?

5 A Yes.

6 Q And you certainly don't know enough about this case
7 to form any opinions about this Defendant; right?

8 A No.

9 Q Now let's get into this issue of the death penalty
10 as a possible punishment. When was the first time that you
11 learned that this was potentially a death penalty case?

12 A In the courtroom.

13 Q That was a couple weeks ago?

14 A Right.

15 Q I imagine it was kind of a shock?

16 A Yes.

17 Q Because the death penalty is not the usual type of
18 case that's tried in the courtroom. The usual type of case
19 that, a criminal case that a jury hears, the jury isn't
20 concerned with punishment at all as an issue. That's usually
21 totally up to the judge to decide.

22 In this type of a case, because of the way the
23 Legislature wrote the law, the jury gets involved in this

1 issue of punishment. It could go into a second phase. And
2 as the Judge indicated in that handout that you read, you
3 understand that some of the charges here are called
4 aggravated murder. Okay. And there are two counts or
5 charges of aggravated murder. One with prior calculation and
6 design, and one with felony murder as a different concept.
7 There are two different theories here of a killing. There's
8 only one killing but two separate theories. And under the
9 law the State is allowed to proceed under both theories of
10 aggravated murder, which we have elected to do, which we're
11 allowed to do that.

12 And attached to this crime of aggravated murder are
13 what we call specifications. These are, it's a fancy word
14 that just means a special extra finding of fact for a jury to
15 consider. And there are two of those, okay, attached to each
16 of these charges of aggravated murder. One of them is that
17 the aggravated murder occurred with prior calculation and
18 design, and that it was during the course of an aggravated
19 burglary.

20 And the second special finding of an aggravating
21 circumstance, fancy word, is that it occurred with prior
22 calculation and design and that it occurred during the course
23 of an aggravated robbery compared to the aggravated burglary;

1 right?

2 A Right.

3 Q Now, if the jury, you and the other 11 jurors,
4 return a verdict of guilty beyond a reasonable doubt of a
5 crime called aggravated murder and one or more of the
6 specifications, we go into a second phase. Okay. The first
7 phase the issue is guilt or non guilt. And because of the
8 fact the issue is guilt or non guilt, it's not relevant to
9 produce any evidence at all about what the appropriate
10 punishment is because we wouldn't be at that phase; right?

11 A (Witness nods head affirmatively.)

12 Q So in the second phase the issue becomes, what's the
13 appropriate punishment for this Defendant for this offense?
14 Okay? And because you've already decided guilt, we never get
15 into the guilt phase here, we get into this issue of the
16 appropriate punishment. And in the second phase you have to
17 do this balancing test that the Judge mentioned. Okay?

18 And on one hand you have the aggravating
19 circumstance or circumstances from the first phase that you
20 would have found, okay, and on the other hand there's what we
21 call mitigating factors. Mitigating factors are things that
22 work to a defendant's benefit and would work against the
23 death penalty as a punishment. Okay. We don't know what

1 those are at this point because it's not relevant. We have
2 no clue what they may be. But there could be something
3 there. And it's up to you and the other jurors how much
4 weight to give to the aggravating circumstance or
5 circumstances on the one hand, and the mitigating factors on
6 the other. You can determine that something has a whole lot
7 of weight, might weigh about a ton or something. And on the
8 other hand, you might decide that a certain thing is
9 presented might have some weight but it might weigh about as
10 much as a feather. So it's up to you and the other jurors to
11 decide how much weight to give it.

12 Now, in this type of a case, a capital murder case,
13 you get involved in this punishment issue. That's what makes
14 it so unique in Ohio. It's not applied in every murder.
15 It's only in certain types of crimes that the Legislature has
16 set out to be where the death penalty is an option.

17 Now, you indicated in the past that you believe the
18 death penalty has a place in society; right?

19 A Sometimes.

20 Q Sometimes. If you could design the criminal justice
21 system, if you sat on the Legislature would you include the
22 death penalty as a possible punishment for certain crimes?

23 A I think I would.

1 Q If you designed the system, for which crimes would
2 you make that a possible punishment?

3 A Well, I've been thinking about this a lot for two
4 weeks, and I've gone back and forth. What I think is, people
5 like, crimes I should say, like serial killers, somebody
6 that's going to keep going out and killing somebody like that
7 is not right. And we're paying a lot of money for them to
8 keep going to trial or keep going to, paying for them to live
9 while we're out there working and they're going out there
10 killing everybody. And they can't be fixed. There's
11 something wrong with them in the head. So --

12 Q Okay. Any other crimes other than serial killers?

13 A I thought if somebody ever did something to my kids
14 I probably would, if somebody purposely hurt my kids I
15 probably wouldn't want to ever see them again.

16 Q That's understandable.

17 A That's about what I can think of.

18 Q Okay. Now, the charge here, the Defendant's charged
19 as a complicitor. Okay. That means she's charged with
20 soliciting or procuring another person to commit the offense,
21 felony, Nate Jackson, or aiding and abetting him in the
22 killing. And the charge is that this Nate Jackson is the
23 one who actually did the killing, and he's the one who

1 actually committed the aggravated burglary and the aggravated
2 robbery. And he had the loaded gun that worked. Okay.

3 Anything about the fact that she's charged as a
4 complicitor, an aider and abettor that would bother you in
5 reaching a decision in this case, and not being the trigger
6 person? She's charged with doing this purposely with prior
7 calculation and design.

8 A I can't say right now. I can't say. I can't tell
9 you what I would think because I don't know enough about it.
10 I mean, that's my honest truth. I can't tell you what I
11 think.

12 Q Okay. But the question is basically, does it bother
13 you that she's, anything about the fact that she's charged
14 with somebody who's helping plan the murder as opposed to
15 being the actual trigger man?

16 A How do I feel about that?

17 Q Right. Does that bother you in any way? Do you
18 think that would effect your ability to decide this case?

19 A I don't think. I don't know what you mean by that.
20 Does it bother me that --

21 Q That she's not --

22 A -- you guys are asking for a death penalty for
23 somebody who didn't actually kill him but wanted him to be

1 killed?

2 Q Right. Under the law, the Legislature has written
3 the law in such a way that the death penalty can become an
4 option in this type of a case.

5 A No, it doesn't bother me. The law has to be written
6 some way. You can't draw the line anywhere. That's why you
7 have a jury; right?

8 Q Right. Okay. Now, your feeling about the death
9 penalty being appropriate in certain types of cases, how long
10 have you had this viewpoint?

11 A I don't know, because I never really thought about
12 it a lot until lately. I can't tell you that either.

13 Q Okay. Have you ever had a chance to discuss this
14 issue of the death penalty being appropriate in certain
15 cases? For example, cases that come up in the news, if you
16 hear it on TV and other people are working, or maybe people
17 at home, family members or family gatherings or other things
18 where the issue comes up, oh, I think this punishment should
19 happen to that person or something?

20 A Not particularly about the death penalty, no.

21 Q Now, you understand that if you and the other jurors
22 find the Defendant guilty of the crime of aggravated murder
23 with one or more of these specifications that make the

1 Defendant eligible for the death penalty, we go to the second
2 phase; right?

3 A Uh-huh.

4 Q In that second phase you can hear the same evidence
5 or you can hear new evidence. Okay. And you understand the
6 burden of proving all the elements of the offense is on us,
7 the people of the State?

8 A Right.

9 Q The Defendant doesn't have any burden.

10 A Right.

11 Q As she sits there she's presumed innocent. That's
12 like a cloak shielding her all the way through the course of
13 this trial. She's presumed innocent, as are all other
14 defendants tried in this courtroom.

15 A Right.

16 Q Now, our burden of proof, we have to prove these
17 elements, the different crimes that are charged here.

18 There's two counts of aggravated murder with the
19 specifications. And there's a crime called aggravated
20 burglary and another crime called aggravated robbery. And
21 attached to those two crimes are some more specifications,
22 special findings of fact, that there was a firearm, okay, a
23 working gun that was involved and used.

1 Now, these elements -- do you ever bake for your
2 kids, ever bake a cake?

3 A Yes.

4 Q What's their favorite? Each one has a different
5 one?

6 A Yes.

7 Q How about plain old chocolate cake?

8 A Yes.

9 Q You've got your certain key ingredients for your
10 standard chocolate cake; right? The eggs and the flour and
11 sugar, the chocolate and baking -- I don't remember if it's
12 Baking Powder or Baking Soda. It's Baking Powder. And a
13 couple other things you add to it. And you've got to mix it
14 all together, put it in the pan and put the oven at what, 350
15 for about 40 minutes or whatever it is, and the cake rises.
16 And if your kids want a chocolate cake, you've met your
17 burden as a mom by making that chocolate cake.

18 Now, if you left out a key ingredient in the recipe,
19 let's say you left out the chocolate, you can make a cake but
20 it's not going to be chocolate cake; right?

21 A Right.

22 Q Same thing with these crimes. We have what are
23 called elements. Each crime is composed of certain elements,

1 and elements are essential component parts of a crime, like
2 the ingredients in a recipe. Okay.

3 Let me give you a for instance. Let's take the
4 crime of aggravated murder with prior calculation and design.
5 And the Judge is going to give you an instruction at the end
6 of this case about the law and all the elements of the
7 crimes. And you're bound to follow his instruction. But,
8 for instance, with aggravated murder the State would have to
9 prove first that it happened on or about a certain date, like
10 December 11, 2001. Okay.

11 The second element or ingredient would be, we have
12 to prove that it happened in Trumbull County, Ohio. Happened
13 up in, let's say Howland Township. Okay. But we're going to
14 have to prove that. And you're going to hear testimony. You
15 may get tired of hearing testimony if I ask the question a
16 million times, "In what county and state did it occur?"

17 Third: Identification of the Defendant. Somebody
18 is going to have to come in and point out the Defendant.
19 Okay. Fourth: That she acted purposely, as a specific legal
20 definition meaning that the Judge will give you, but
21 basically it's on purpose.

22 Fifth: That she caused the death of a living
23 person, in this case a fellow by the name of Robert

1 Fingerhut. And sixth: That she did it with prior
2 calculation and design. And the Judge will define that term.
3 But you heard the old term premeditation? Well, they changed
4 the law and they required some planning and forethought to
5 have prior calculation and design. It's more than just
6 dropping my pen and catching it by reaction. If I drop my
7 pen, I look down and say, oh, my goodness, I dropped my pen,
8 maybe I better get down and pick it up, and I do that, that
9 requires some prior calculation and design; right?

10 A Yes.

11 Q Now, in the second phase, okay, let's go to the
12 second phase for a minute here. We have to prove the
13 elements by proof beyond a reasonable doubt. And the Judge
14 will define that term for you, too. But basically when we
15 talk about proof beyond a reasonable doubt we're talking
16 about using your reason and your common sense that you use
17 every day as a mom. You use it every day as a nurse. You
18 use it in your life, your reason and your common sense. And
19 we have to firmly convince you of the truth of the charge to
20 a moral certainty using your reason and common sense. Okay.

21 One example that's been given, an analogy, is having
22 a box and filling the box up. You know, in a civil case
23 where somebody sues for money damages, they've got to fill

1 the box just over halfway. That's by a preponderance of the
2 evidence. But in a criminal case that's proof beyond a
3 reasonable doubt. So we've got to have it filled not to the
4 top. That's like 100 percent proof. Okay. There's no such
5 burden of proof in criminal law. We don't have to fill it
6 all the way to the top. We've got to fill it close enough to
7 the top so that you're convinced, that you're satisfied that
8 we met our burden there. That it's reasonable. Okay.
9 There's no reasonable doubt. That's what reasonable is, we
10 prove the truth of the charge, these elements.

11 And each juror, you and each of the other 11 jurors
12 will decide for yourself how high on the box do you want us
13 to fill that box with evidence until you're satisfied with
14 it.

15 You understand there's no such animal as proof
16 beyond a shadow of a doubt? Sometimes that term is bantered
17 about. It's a nice title for an Alfred Hitchcock movie, but
18 it's not a criminal law concept. Some folks come in and
19 said, I want it proved 100 percent beyond all doubt. That's
20 not our burden. If the Judge tells you that our burden of
21 proof is proof beyond a reasonable doubt you'll hold us to
22 that burden; right?

23 A Right.

1 Q You wouldn't force us to a higher burden than what
2 the Judge says our burden is?

3 A No.

4 Q So let's say we're in the second phase and we have
5 to prove to you beyond a reasonable doubt that the
6 aggravating circumstance or circumstances outweigh whatever
7 mitigating factors are presented. Now there are four
8 possible penalties. You're aware of that. The Judge told
9 you about the four penalties: The death penalty; life in
10 prison with no parole eligibility; life in prison with parole
11 eligibility after 30 full years, and; life in prison with
12 parole eligibility after 25 full years. And they should all
13 start out equally in your mind, right, as possible
14 punishments?

15 A (Witness nods head affirmatively.)

16 Q Because they're there. But if the State convinces
17 you and the other jurors that the aggravating circumstance or
18 circumstances outweigh these mitigating factors beyond a
19 reasonable doubt, then you and the other jurors must return a
20 verdict finding for the death penalty as a punishment, okay,
21 because that's our burden. Okay. At that point you don't
22 consider the life sentences because we've met our burden of
23 proof.

1 It's only if we fail to meet that burden and we
2 don't prove that the aggravating circumstance or
3 circumstances outweigh the mitigating factors beyond a
4 reasonable doubt, that then you go on to consider the three
5 life sentences.

6 A Okay.

7 Q Can you follow that law if the Judge gives it to
8 you?

9 A Yes.

10 Q Okay. Now, if you decide that the death penalty is
11 the appropriate punishment for this Defendant for this
12 offense, can you sign a verdict for the imposition of the
13 death penalty?

14 A I guess if something was proved.

15 Q If we proved it beyond a reasonable doubt, which is
16 our burden, that that's the appropriate punishment under the
17 law?

18 A That's a big job to prove.

19 Q Absolutely. And it's only right. This is the most
20 serious of cases in criminal law. It's only right that that
21 heavy burden be on us. But if we meet that burden so that
22 you're convinced in your heart and in your mind you're
23 convinced that we met that burden of proof, that we have

1 proved that the aggravating circumstance outweighs these
2 mitigating factors beyond a reasonable doubt, then that's the
3 appropriate punishment in this case. Would you be able to
4 sign a verdict form? And the reason I'm asking you that, I'm
5 asking to search your heart and your mind right now because
6 you're the only person who knows if you're capable of doing
7 that.

8 And it's important, you would agree, that both sides
9 get a fair shake in this trial; right?

10 A I agree.

11 Q It's important that the Defendant get a fair shake.
12 Because you understand the death penalty is not an automatic
13 punishment for somebody who's found guilty of aggravated
14 murder with these specs; right?

15 A Right.

16 Q And it wouldn't be fair to her if somebody came in
17 and said, you know, I believe that anybody who's found guilty
18 of aggravated murder, who commits a premeditated murder,
19 let's say, with prior calculation and design, somebody who
20 kills another maybe for the insurance money should
21 automatically get the death penalty, and I don't care what
22 the judge says the law is and I don't care about the
23 prosecutor's burden of proof, if she's found guilty of that

1 then I'm going to automatically vote for the death penalty as
2 a punishment, that wouldn't be fair to the defendant, would
3 it?

4 A No, it wouldn't.

5 Q And by the same token, if somebody says, you know, I
6 favor the death penalty but I could never take part in
7 actually returning that type of a verdict, and I would never
8 be able to sign the verdict form -- let's say somebody said,
9 well, yeah, I could do it, but then they get in there and
10 they think about it and they say, I've been thinking about
11 this for a while and when it comes down to it, they've met
12 their burden of proof, they proved the death penalty is the
13 appropriate penalty in this case, but I could never sign that
14 form so I can't do it, and the person doesn't; the State
15 wouldn't get a fair shake; right?

16 A Right. I understand what you're saying. You're
17 trying to find somebody fair for both sides.

18 Q Right.

19 A I understand that.

20 Q Do you think --

21 A If I didn't think I could do it I would have wrote
22 that on the paper.

23 Q If we met our burden of proof and convinced you that

1 that's the right penalty in this case, you would be able to
2 sign that verdict form?

3 A If it was the right thing to do.

4 Q And if it came time in court to announce your
5 verdict, if the Judge said, "Is this your verdict," would you
6 be able to say, yes, it's my verdict?

7 A Yes.

8 Q Do you think that anybody might criticize the death
9 penalty verdict if you were to return it in this case, maybe
10 a family member, friend or coworker?

11 A I'm sure there is people that, I mean, they would
12 know, and I'm sure they would. But --

13 Q But you would make your own decision?

14 A Yeah, I do.

15 Q And I notice you're a nurse?

16 A I'm a nurse's aide. There's a difference.

17 Q You help people?

18 A Right.

19 Q So what we're asking sort of, it's almost, as a
20 nurse's aide you help people that help save lives; right?

21 A Yes.

22 Q And what we're asking is sort of contrary to that in
23 a way. We're asking you to consider the taking of a life.

1 Okay.

2 Now, the reason for the death penalty in this
3 country, you believe that the death penalty is necessary
4 because, when you said a person doesn't have a conscious and
5 has to answer for something; it's his punishment?

6 A Right.

7 Q An appropriate punishment for --

8 A In other words, like if you tell your kids you
9 better not use the whatever, if they go against you they know
10 there's going to be a punishment for them. There has to be a
11 punishment in society or there would be chaos. There's
12 consequences for everything.

13 Q And I take it you believe in holding people
14 accountable for their actions then, their deliberate actions?

15 A Yeah.

16 Q We don't punish people for accidents. For example,
17 let's say somebody is chopping wood and the head of the ax
18 flies off and kills somebody, that would be an accident and
19 you wouldn't expect the person to be held accountable for
20 that?

21 A Right.

22 Q Now, another thing I want to bring out is if you
23 have any questions that come up during this question and

1 answer period, feel free to ask them as long as it pertains
2 to what we're doing here. It's the one shot you get at
3 asking the Judge or the lawyers some questions.

4 Now, because we've got to prove these elements of
5 the crimes charged, we're lawyers, we gear our questions
6 toward proving elements; right? You would expect that;
7 right?

8 A Uh-huh.

9 Q And you may have some questions that arise that we
10 may never get to, but you're stuck with the questions that we
11 ask. And when I say certain questions, like let's say, let's
12 say you have an interest in footwear. Like my wife has,
13 she's probably got a trillion pairs of shoes, maybe more, and
14 she --

15 MR. INGRAM: Did you say a trillion?

16 MR. BAILEY: Yes.

17 Q Okay. Let's say you have an interest in footwear,
18 like what kind of footwear was somebody wearing at a certain
19 time. And let's say it's not relevant to proving the
20 elements of the crime. You can make your decision in the
21 case without any concern for the footwear, but because maybe
22 you sold shoes or you manufactured shoes, you have an
23 interest in them. Were they wearing wing tips or Nikes or

1 whatever? But that question never gets asked and never gets
2 answered. So that would be something that you would never
3 get an answer to in a case. But if it had no bearing on
4 proving the aggravated murder, you would be able to make your
5 your decision without that, right, instead of unanswered
6 questions? Sort of a silly example but it's an example.

7 Now, to prove these elements we rely on different
8 types of evidence.

9 A Okay.

10 Q The State can rely on what we call direct evidence
11 where somebody comes in and testifies to something he or she
12 has learned through the use of his or her five senses. Like
13 for example, I heard a gunshot and it was loud. I smelled
14 the smoke and it was acrid. I touched the surface and it was
15 cold. Okay.

16 But there's another type of evidence that we rely
17 on. I think you would agree that when people commit serious
18 crimes like murder, or if they plan murders, they don't go
19 out on the courthouse steps at noon and announce to the whole
20 world what they're planning to do usually; right?

21 A Right.

22 Q So usually they plan those things in secret. And
23 because of that, because we may not have a person expressing

1 what's in his mind or her mind, we have to rely on sort of
2 roundabout evidence, we call that circumstantial evidence.
3 You might have heard that term before. Sometimes people who
4 aren't familiar with circumstantial evidence sort of say,
5 it's only circumstantial evidence like in Perry Mason. Okay.
6 But circumstantial evidence is where you're presented with a
7 fact or series of facts and then you're asked to draw a
8 logical conclusion to another fact or series of facts.

9 Let me give you a for-instance of that. Let's say
10 you live in a two-story house and you go to bed at night and
11 you're up in your bedroom and you look out across the
12 neighborhood through the window, and it's a beautiful night.
13 The moon is beaming. The stars are twinkling. There's not a
14 cloud in the sky. And you close the blinds, get into bed.
15 And just before you drop off to sleep you hear on the radio
16 the announcer says, folks, there's a cold front moving in
17 tonight. There's going to be a storm. And you fall asleep.
18 And sometime during the night you're awakened. You like
19 toward the window and there's a bright flash coming from
20 outside, and a few seconds later there's a distant booming
21 sound from the sky.

22 And you can't see what's going on outside because
23 the blinds are closed. And a few seconds later there's

1 another bright flash outside, a closer booming sound. And
2 about half a minute goes by and then there's a really bright
3 flash from outside and a heavy ripping, booming, cracking
4 sound above the house and a pitter-patter on the roof, and
5 then you fall back asleep.

6 And then sometime later you awaken, you go to the
7 window, open the blinds, you look out. It's a beautiful day.
8 The sun is shining. Not a cloud in the sky. But as far as
9 you can see across the neighborhood where it was dry the
10 night before it's totally soaked. The rooftops are all wet.
11 The streets are flooded with water. Drops of water are
12 dripping off the leaves of the trees. And there's no fire
13 hydrant nearby where some car could have hit it and sprayed
14 it. There's no volunteer fire department nearby where they
15 could have hosed down the whole neighborhood that night.

16 You know what happened during the night, don't you?

17 A Right.

18 Q What happened?

19 A There was a thunderstorm.

20 Q Absolutely. There was a thunderstorm. And you know
21 that beyond any reasonable doubt; right?

22 A I would say.

23 Q I would say so, right. And you would say so. And

1 that is circumstantial evidence. And you understand that we
2 can prove these elements with circumstantial evidence because
3 it's just as good as direct evidence. Sometimes maybe even
4 better.

5 Now, we can prove these elements using
6 circumstantial evidence. And I think you would agree that
7 not all criminals are rocket scientists. They're not always
8 really bright; right?

9 For example, have you ever seen on TV or read in the
10 magazines maybe that you read where a burglar goes into a
11 house and drops his wallet, leaves it behind? Or the robber
12 goes into the bank and hands them an envelope with a stick up
13 note, and they read the stick up note and give him the money.
14 And he leaves, and they turn the envelope over and it's got
15 his name and address on the other side. You're familiar with
16 situations like that?

17 A Right.

18 Q So sometimes you're aware that criminals are really,
19 really stupid; right?

20 A I guess.

21 Q And we can prove these with circumstantial evidence
22 like if we had letters or telephone conversations of a crime
23 being planned, that would be circumstantial evidence of a

1 crime, wouldn't it?

2 A (Witness nods head affirmatively.)

3 Q With circumstantial evidence, that rain storm
4 example I gave you, there is sometimes things you can't tell,
5 I mean, from it. You may not know, because you were
6 sleeping, how long that storm lasted, whether it was 20
7 minutes or two hours, or how much rain fell. But you know
8 beyond any reasonable doubt that there was a thunderstorm;
9 right?

10 A Right.

11 Q Now, there's room in there for some possible or
12 imaginary doubt. You can imagine that during the night Alf
13 and his martian buddies flew by in a flying saucer and put on
14 a sound and light show and sprinkled the ground with some
15 white stuff, but that would be a foolish or imaginary doubt,
16 wouldn't it?

17 A Right.

18 Q And you know beyond any reasonable doubt, filling
19 that box up closest to the top that there was just a
20 thunderstorm?

21 A Right.

22 Q Another thing is, under our system you can't take
23 notes. When you're in school you're used to taking notes;

1 right?

2 A Uh-huh.

3 Q Me, too. College, law school, we sat there and we
4 took a lot of notes. But under our system in Ohio you have
5 to sit and listen to the witnesses. Okay. That's important
6 to pay very close attention.

7 Our judges don't let you take notes because they're
8 afraid that it's going to distract you from looking at the
9 witness, listening to the testimony and observing the
10 witness's demeanor.

11 Also in some jurisdictions if you ever watch Court
12 TV there's some jurisdictions where jurors can hand notes
13 with questions to the judge and the judge can ask questions.
14 That doesn't happen here in Ohio. Each state is different.
15 You have to rely on questions asked by the attorneys.

16 And there aren't going to be any instant
17 transcripts. It's not like O.J. Simpson where they had a
18 million dollars for recording equipment. We don't have that
19 in the budget. We have very good court reporters, but
20 Richelle is not going to get you an instant transcript. So
21 sometimes the question is asked, can we have the testimony of
22 so and so? And the answer is going to be no, you have to
23 rely on your collective recollection. That's why there are

1 12 of you. So I'm sure with 12 of you somebody is going to
2 remember what another person might not pick up?

3 A Right.

4 Q So you will talk together, reason together, all the
5 jurors, coming to your conclusion. And there won't be any
6 instant replays, unlike TV where they show you something and
7 then a couple seconds later they show it to you, like maybe a
8 football game or a baseball game or something like that. Not
9 going to happen in this case. It's important that you pay
10 very close attention.

11 You're not allowed to go out to the scene to
12 investigate on your own. That can cause a mistrial. We've
13 had that happen, because one time when a juror did that, he
14 was probably watching some movie or something where one of
15 the actors do it in TV or a movie, and in real life you can't
16 do that; you understand that?

17 A Uh-huh.

18 Q At the conclusion of the case, at the end of the
19 first phase you're going to be sequestered. And
20 sequestration just means that after all the testimony is in
21 and after the Judge instructs you on the law the jury is kept
22 together. If you can't decide the case within that day, then
23 you are taken back and you go to a hotel. And then the next

1 day you come back and you get back together. And you're only
2 allowed to deliberate when you're all together.

3 A Right.

4 Q And each jury is different. Some juries, I've seen
5 juries come back in the first phase in an hour and a half.
6 I've seen juries take up to five days. Okay. There's no way
7 to predict how long it's going to take.

8 A Right.

9 Q And then let's say you and the other jurors come
10 back at the end of the first phase with a guilty verdict
11 beyond a reasonable doubt of aggravated murder and one or
12 more specifications, there would be a short break, and then
13 come back, within a week probably, and we would move into a
14 second phase. And we hear some more testimony perhaps in the
15 second phase for one to three days. And then you would be
16 sequestered again. And again, it depends on the jury how
17 long it takes you to decide in the second phase.

18 Would that cause you any undue hardship to be
19 sequestered? I know you've got the children. But your
20 husband, can he handle that?

21 A The youngest are 11.

22 Q So --

23 A They're all right.

1 Q And I take it, are there any problems or pressing
2 concerns at home or work that are going to effect your
3 ability to concentrate on the evidence? I expect we're going
4 to start this trial at the beginning of next month and it's
5 probably going to take a week and a half to two weeks to try
6 this case. And the second phase may take one to three days.

7 A Everything is okay.

8 Q Okay. Now, during the course of this case as the
9 case goes on as you're face to face with the Defendant and
10 perhaps as her chair is turned toward you you're going to
11 become more acquainted with her. My question to you is this:
12 When you and the other jurors go back in your jury room to
13 deliberate on your verdict, can you set aside any sympathy
14 you might have toward the Defendant and be conscientious in
15 your deliberations and base your verdict on testimony and the
16 evidence that you receive and the instructions of the law
17 given to you by Judge Stuard, and lay aside whatever thoughts
18 you might have of sympathy for the Defendant in reaching a
19 decision?

20 A I think that you have to listen to the facts of
21 everything no matter what anybody, somebody could -- you
22 can't count on that, I don't think.

23 Q Anything that, any questions that you have at this

1 point that you think you need an answer to?

2 A No. I just want to know if you ask every single
3 person these questions? Don't you get tired of it?

4 Q That's why we get paid all these big bucks.

5 MR. INGRAM: You have no idea how tired we
6 are.

7 A I really don't have any questions.

8 Q I'm done asking questions. The defense counsel will
9 have an opportunity to address you. The Court may want to
10 break for lunch at this point.

11 THE COURT: Yeah. Can you come back at
12 1:00?

13 A Yes.

14 (Whereupon, a luncheon recess was taken.)

15 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

16 THE COURT: I have to make one observation
17 about this lady. You notice she put the person she most
18 admires as her mother-in-law. That speaks volumes both ways.
19 That's very unusual. Your mother-in-law should be pleased
20 with that. Were you done?

21 MR. JUHASZ: Thank you, Your Honor.

22 EXAMINATION

23 BY MR. JUHASZ:

1 Q Good afternoon.

2 A Hi.

3 Q Are you still nervous or not?

4 A I'm all right.

5 Q Do you need water?

6 A No, thanks.

7 Q I'm John Juhasz. This is Jerry Ingram over there.

8 And he and I are representing Donna. I'm going to try not to
9 ask you all the same questions you've already been asked, all
10 right, so that we don't make this any longer and more
11 laborious for you than it already is.

12 And I'm sure you appreciate this: Jerry and I have
13 a serious responsibility here because we're representing
14 Donna who's on trial for some very serious charges.

15 A Right.

16 Q And what we're doing right now, and we all admired
17 and appreciated your comment earlier about asking these
18 questions of everybody individually. We are. And the reason
19 we're doing it is, it's sort of like a job interview. We're
20 interviewing you for kind of a temporary job, one that
21 wouldn't last real long but an important job which is
22 deciding whether or not somebody is guilty. And if you find
23 that person is guilty, deciding what's the appropriate

1 punishment.

2 So even though it's taking a long time, even though
3 it's probably not a lot of fun for people who are sitting in
4 the chair where you are, what we're trying to do obviously is
5 get a jury of fair and impartial people. And I'm sure if you
6 or somebody you cared about were sitting over there, that's
7 the same type of jury you would want in a case like this.
8 Does that all seem fair to you?

9 A Yes.

10 Q We bring folks like you into the courthouse. You
11 didn't really apply for this job but you're being interviewed
12 for, you got sent a notice. And we bring you down here, and
13 a lot of times things that seem second nature to us, because
14 we do it all the time, are of course foreign to people who
15 don't do it all the time. I bring that up because if, as I'm
16 talking to you, anything that comes up that you have a
17 question about, I don't want you to feel reluctant about
18 asking it because I don't want to stand here and take a bunch
19 of time explaining things you already know, but I also want
20 to make sure that if you don't understand something you stop
21 and ask. Fair enough?

22 A Yes.

23 Q One of the things that is second nature to us but

1 maybe isn't to you is that there are a bunch of rules that we
2 have to follow. You can imagine, I think you mentioned
3 earlier something about what, it would be chaos if, if we
4 didn't have some rules and procedures to follow. It would be
5 the same thing here. If we didn't have rules to follow maybe
6 Mr. Bailey and Mr. Becker would be saying, I want to go
7 first, and Mr. Ingram and I would be saying, no, I want to go
8 first. So we have to have rules.

9 Here's why I bring that up. One of those rules is
10 that at the beginning of the trial before you heard any
11 evidence about whether Donna Roberts is guilty or not, we're
12 standing up here asking you all kinds of questions about the
13 death penalty. And all I want to make certain about that is,
14 do you have any inclination that because we're all asking you
15 these questions about the death penalty when you haven't even
16 heard anything about whether she's actually guilty or not, do
17 you have some inkling in your mind, well, these guys must all
18 think she's guilty because they're all talking to me about
19 the death penalty?

20 A No. I think you're just being careful who you get
21 on your jury.

22 Q And one of the other lawyers, I think it's Mr.
23 Becker, has a pretty good example that he uses which is, if

1 we don't do it now we can't wait until later, and then if the
2 jury finds the person guilty and say, okay, now we're going
3 to talk about the death penalty. We would have a bunch of
4 people going woo, woo, woo, nobody told me about that. I
5 can't do that. So we have to find out now. Are you okay
6 with all that?

7 A Yes.

8 Q You don't have any inkling in your mind, Donna must
9 be guilty because they're talking to me about the death
10 penalty already?

11 A No.

12 Q You heard a little bit about the case and that's
13 okay, because when you had the news on you obviously didn't
14 know you were going to get a jury summons for this particular
15 case. We just need to talk about that and make sure that
16 you're comfortable being on this case.

17 As a result of anything that you heard or saw, do
18 you have an impression right now that she is guilty?

19 A I can't say that because I really don't know what
20 happened. I just know what I think. I don't even know for
21 sure what's going on.

22 Q That's okay. Let's talk about that for a second.
23 Because here's the reason we ask some of these silly

1 questions about that. And I think the Judge has said to you,
2 if you can set aside some impression that you have and decide
3 the case based only on the evidence, then you're qualified to
4 be a juror and we want you.

5 If you have a preconceived notion that you can't set
6 aside, either that she's guilty or that she's not guilty,
7 then we have to spend some more time talking about that.

8 One of the things that we need to know, and only you
9 can answer this question for us is, let's say that even
10 something that you can't think about right now, maybe you
11 hear something during the trial and you go, you know what, I
12 heard that on the news. That's okay also. But what we need
13 to find out is, if you hear that and it's the same thing as
14 what's, what the witness says on the witness stand, you
15 understand, don't you, that you have to evaluate that
16 witness's testimony? You can't say, you know what, that
17 witness must be telling the truth because that's the same
18 thing I heard on TV?

19 A Right. No, I understand what you're saying.

20 Q So I'm going to ask you to sort of look inside
21 yourself. If you were sitting over at that table now and
22 there was a juror who had been exposed to some publicity, not
23 a lot but some, would you feel comfortable having a juror

1 decide your case who's got the mindset that you have?

2 A Would I care if I was sitting over there? If I was
3 the one sitting here I wouldn't care because I think I'm
4 fair. And that's what I think.

5 Q Okay. And that's the bottom line. And really what
6 I'm asking you is, even though you heard some of those TV
7 reports, there's nothing about that that, that says, I've got
8 my mind made up and these guys are going to have to prove to
9 me she's not guilty. You don't feel like that?

10 A No.

11 Q Besides the TV stuff, have you heard anybody else
12 discuss the case at all?

13 A No. Except during here.

14 Q Except for in here. How about on April the 8th or
15 whatever it is when we started down in Judge Logan's
16 courtroom, did you hear anybody talk about the case that day
17 other than Judge Stuard?

18 A No.

19 Q Other people assembled in the room?

20 A No.

21 Q You had a four-wheeler stolen out of your garage?

22 A Yes.

23 Q You live in Weathersfield Township; correct?

1 A Yes.

2 Q I live not too far from you. And I've been
3 fortunate my four-wheelers have not been stolen. All I want
4 to find out about, is there anything -- did they ever catch
5 anybody who did that?

6 A No.

7 Q It looks to me from your questionnaire like maybe
8 you gave the police a statement about the four-wheeler being
9 taken; correct?

10 A Right.

11 Q Anything about -- I know there's a sense of
12 frustration when you're the victim of a crime and they never
13 find the person, because that actually happened to me once so
14 I understand that frustration. Anything about that that
15 makes you have some negative feeling about the criminal
16 justice system?

17 A No.

18 Q That may seem like a silly question. The reason we
19 ask it, sometimes we get people who do, who, because they got
20 victimized and nobody was ever found, all of a sudden they're
21 going to sort of extract their revenge through being a juror?

22 A We can't find everybody that steals stuff.

23 Q I was also impressed, like Judge Stuard, I noticed

1 on your questionnaire that the person you admire the most is
2 your mother-in-law. That's a, with all the mother-in-law
3 jokes going on, that's a little bit unusual. I'm interested
4 in that for a second. Can you tell me why that is?

5 A She's the best person I know. She just is very
6 smart. She can do a lot of stuff. And she's loyal and she's
7 honest. And she taught me how to cook. I don't know. I
8 just trust her. I would trust her with my kids. I don't
9 know.

10 Q It sounds like she's accomplished a lot, and
11 obviously earned your admiration. You two have a lot going
12 on though, I see. You've got five kids. You're working and
13 you're involved in a lot of things. If I'm reading this
14 right, you coach fast pitch softball. Is that girls
15 softball?

16 A Uh-huh.

17 Q There was something else on there that I couldn't
18 make out. It looked like a coach or something like that.

19 A Odyssey of the Mind.

20 Q Odyssey of the Mind. Okay. You have, have you guys
21 gone away to do that or just do it locally or --

22 A No. Well, kind of. YSU we've gone to. And I don't
23 know the name of the school. Kind of. It's not more than an

1 hour away.

2 Q My son was in that a few years ago and we ended up
3 going to Columbus which was --

4 A We didn't go that far.

5 Q It was a little bit more of an ordeal. Count your
6 blessings. It was a little bit more of an ordeal than you
7 might wish for. So you find time to do a lot of things?

8 A Uh-huh.

9 Q One thing we want people to do, as we like to say,
10 their civic duty. We also, however, don't want people who
11 are going to be so distracted that they're not going to be
12 giving us their full attention.

13 You're okay with doing this as far as work and
14 everything else going on? I know you said no problem with
15 your kids. But all this other stuff you're doing?

16 A No. I'm all right.

17 Q What about the volunteer fire thing; is that just a
18 you get --

19 A I have a pager, two-way radio. And when I'm not
20 busy I can go on a call. We only have to do certain
21 percentage of calls per month. They don't call us and tell
22 us when to come. We go when we can.

23 Q And you've had training to be a firefighter and the

1 whole nine yards?

2 A I just went through it, yes.

3 Q I don't want to spend a lot more time on the death
4 penalty, I just want to make sure that I understand how you
5 think about it. And, again, if there's a question tell me,
6 otherwise I'm going to assume that you're okay with that.
7 You understand how the process works basically?

8 A Yes.

9 Q You understand that if you do get to a second phase
10 there are four penalties available to you?

11 A Yes.

12 Q Is there anything about how you feel about the death
13 penalty that, that if you get to that phase one of them is
14 going to have a leg up over the other? Or can you start out
15 with all four of them equal in your mind and make the
16 government prove, if they can, that the person should get the
17 death penalty?

18 A I think it's their job to prove that.

19 Q And if they don't, you have no problem saying you
20 didn't prove it so even though we're at the second phase I'm
21 going with one of the life sentencing options?

22 A Right. If they don't prove it, yes.

23 Q All right. I just stopped because you're soft

1 spoken. I didn't know if I caught all your answer.

2 One of the questions that we put in the
3 questionnaire is if you think there's something wrong with or
4 what the problem is with the criminal justice system. And
5 you put down, do you recall you put down an answer about
6 O.J., listed O.J. Simpson as part of it?

7 A Yes.

8 Q Can you elaborate on that a little more? I'm not
9 necessarily talking about the O.J. thing. I mean, your
10 feelings about the criminal justice system and what you think
11 the problems are?

12 A I think sometimes when you don't have the money --
13 this is what I think. I don't know it's a fact.

14 Q That's okay.

15 A That sometimes people don't get a defense that they
16 deserve. Sometimes people get walked on because they don't
17 have somebody sticking up for them the right way. Obviously
18 the more money you have the more you can get away with
19 sometimes. That's how I feel.

20 Q All right. When you -- now, you seem to be telling
21 me two different things and I want to make sure I understand.
22 Because you seem -- the last part of it you said get away
23 with. Do you have the impression that if somebody is rich

1 and hires a big fancy lawyer that they, that they always get
2 off?

3 A Not always. I just think sometimes, I think that
4 sometimes maybe evidence disappears or there's, something
5 always can change when you have money. Sometimes, I think
6 maybe somebody just gets a new, just say a new public
7 defender that's not experienced. He doesn't know how to do
8 something and he's defending somebody and he doesn't know the
9 right way, and then that's how it goes.

10 Q All right. So that's why you're saying if people
11 don't have money they end up with, as you said, a new public
12 defender who really doesn't know the ropes of trial law yet.
13 That person, even though they're innocent, might end up
14 getting, for want of a better phrase, railroaded?

15 A I just think that happens. I think it's harder now
16 with DNA and stuff like that, but I think back in the day it
17 happened a lot.

18 Q Part of -- and believe me, when I use this I'm not
19 attempting to shift blame to you as a potential juror in this
20 case or to any jury, but part of -- there are a number of
21 safeguards in our system. Okay. One obviously is that if a
22 person is accused of something they have a right to have a
23 lawyer represent them. And we just talked about that, so

1 let's not rehash that.

2 The other part is, as you know I think from talking
3 to the prosecutors, is that the Government has to prove its
4 case beyond a reasonable doubt; correct?

5 A Right.

6 Q And if they don't, then it's the jury's job to say,
7 listen, you didn't prove your case. I have to find this
8 person not guilty.

9 A Right.

10 Q You're okay with that?

11 A Yes.

12 Q And so even if the lawyer does kind of a yucky job
13 in the right case, a jury that has the right frame of mind
14 may provide a safeguard. Am I making sense how I say that?

15 A Right. But you're only, you're counting on evidence
16 that's being brought before you. What if somebody wasn't
17 bringing the right evidence in front of you or something gets
18 skipped over? That's what I'm referring to.

19 Q That's what you're referring to. But in the
20 ordinary case where the evidence is brought out.

21 A Right.

22 Q The jury can provide that additional safeguard. You
23 see that?

1 A Right.

2 Q I like to talk about that in terms of -- and I'm
3 sure you've heard the phrase proof beyond a reasonable doubt
4 before?

5 A Uh-huh.

6 Q I like to talk about that in terms of a box. And
7 I'll tell you why, why I came up with that. Okay. Now
8 you're looking at me like I'm nuts already. Hopefully you
9 won't think I'm nuts when we're done. But we'll see what
10 happens.

11 I said a few minutes ago that we bring you in here
12 and we say, hey, sit there and be fair and impartial. Listen
13 to everything and follow all these rules that you never heard
14 before. My experience has been that juries really come in
15 here, they want to do their civic duty. They want to be
16 fair. And the problem sometimes is, I don't
17 understand all the things you people are doing because you
18 haven't explained it. Now here's why I bring that up.

19 At the end of the case, I think you've heard, Judge
20 Stuard will give you instructions on the law. In fairness to
21 him, some of those instructions are what the law requires him
22 to give. Even if he wanted to do something else the law
23 says, this is what you say. And there's a statute that talks

1 about how reasonable doubt is defined.

2 Now, I bring all this up because there's really no
3 way to quantify reasonable doubt. You come in here and you
4 want to do a good job and you want to be fair to the State,
5 you want to be fair to the Defendant. If they prove their
6 case beyond a reasonable doubt, then the guilty verdict
7 should go to them. If they didn't prove their case beyond a
8 reasonable doubt, then the not guilty verdict should be
9 entered; right?

10 A Uh-huh.

11 Q But there's no way to quantify it. Nobody is going
12 to say to you, listen, if you have four pieces of physical
13 evidence and three witnesses on the State's behalf you have
14 to find the Defendant guilty. But if you have less than
15 that, not guilty.

16 Because in a given case one witness who can testify
17 to everything that meets all of the elements of a crime, and
18 if the jury believes that person, that can be enough to prove
19 the case beyond a reasonable doubt. And conversely, a case
20 with 50 witnesses that the Government produces, if the jury
21 doesn't find that they proved the case, even though there's
22 50 witnesses, you can still find reasonable doubt. Do you
23 see how that works?

1 A Yes.

2 Q All right. And so there's no way to quantify
3 reasonable doubt. So I came up with my silly little box
4 example. And what you have to do as a juror is kind of in
5 your mind's eye when you go back into the jury room is, you
6 have to take all the evidence that's been given to you by the
7 State and pour it into this imaginary box.

8 Now, the standard of proof beyond a reasonable doubt
9 is the highest standard of proof we have in our law. But the
10 State doesn't have to prove its case beyond all doubt, just
11 beyond any doubt based on reason and common sense. Okay.

12 So all that having been said, you as a juror would
13 draw a line on that box. And because it's the highest
14 standard of proof, it would be pretty high on the box. But
15 because they don't have to prove their case 100 percent
16 beyond possible or imaginary doubt, it's not all the way to
17 the top of the box; does that make sense?

18 A Uh-huh.

19 Q If they pour in enough evidence to fill that box up
20 beyond the line that you call reasonable doubt, then you find
21 the person guilty because they proved their case beyond a
22 reasonable doubt. Okay. But if you look in the box and you
23 say at the end of the trial here, there's no evidence in

1 there, or there's some evidence but they didn't get beyond
2 that line called beyond a reasonable doubt, it isn't so much
3 that the Defendant wins the case; it's that the State loses
4 the case by not giving you enough proof; does that make sense
5 to you?

6 A Uh-huh.

7 Q The reason I like to talk about the box is because I
8 think it clarifies the idea that a criminal case isn't like
9 the state wins or the defendant wins. It's really the state
10 wins or the state doesn't win because they either prove the
11 case or they don't. Does that make sense to you?

12 A (Witness nods head affirmatively.)

13 Q And the other reason I like to talk about it is is
14 because they've got to pour all the evidence into the box.
15 The Defendant doesn't have to pour any in and she doesn't
16 have to reach in and take any out. Okay?

17 A (Witness nods head affirmatively.)

18 Q All of that having been said, do you have any
19 problem in this case holding the State to that burden of
20 proof?

21 A No.

22 Q Okay. That burden would apply in two separate
23 phases, if we get that far. Okay. If you find that they

1 filled up their box at the first phase they would have to
2 fill up another box at the second phase which is to convince
3 you again beyond a reasonable doubt that the reasons to
4 impose the death penalty outweigh the reasons not to. And
5 you're okay with holding them to that burden?

6 A Right.

7 Q It is natural -- I only have one child. You have
8 five. I'm going to assume that from time to time somebody,
9 one child has made an allegation against the other one. He
10 pulled my hair. He tripped me. She did this; right?

11 A Uh-huh.

12 Q As a parent you want to find out, first of all, did
13 the child do that?

14 A Uh-huh.

15 Q And then if they did, what's the appropriate
16 punishment; correct?

17 A Yes.

18 Q Because you don't go handing out punishment until
19 you find out if the child actually did the thing that they
20 were accused of; right?

21 A Right.

22 Q And when you try to be fair, you want to hear both
23 sides. You wouldn't just take one child's allegation without

1 hearing what the other one had to say; correct?

2 A Right.

3 Q All right. That's what most of us like to do in our
4 ordinary lives when we want to be fair. And as a jury you
5 want to be fair. But it's a little bit different rule that
6 we operate under because of what I just said about the box.
7 See, that's why the defendant doesn't have to take the
8 witness stand and the defendant doesn't have to testify in a
9 criminal case. Okay. Does that make sense to you?

10 A Uh-huh.

11 Q All of that having been said, let's say that Ingram
12 and I decide to do the crossword puzzle or go to sleep during
13 the trial because we don't have any other legal obligation
14 except to be here. My question is, if we decide not to put
15 on evidence, or if Donna decides not to testify, are you
16 going to sort of hold that against her because of the natural
17 inclination that we all have to hear both sides?

18 A Okay.

19 Q Do you want me to do that again?

20 A No.

21 Q You want to think about it?

22 A No. I'll just tell you that if he -- obviously if
23 he's proven something you're going to want to help her;

1 right?

2 Q Right.

3 A So you're not just going to sit there and sleep.

4 Q We're probably not, to be honest with you. We could
5 but we probably won't. We probably won't.

6 A So I understand what you're saying.

7 Q All right. And some of the things that we do aren't
8 really reaching in and taking stuff out of my imaginary box,
9 but here's an example I like to use.

10 Let's say that I'm accused of killing somebody out
11 at the corner of High Street and Pine Street, okay, on
12 January 1st at 4:00 o'clock in the afternoon. So the State
13 brings in a witness and he says, yep, that guy sitting over
14 there, Juhasz, I saw him. He got out of his car, he walked
15 up to this poor person and he shot him. It was 4:00 o'clock
16 on January the 1st. Even though we tell jurors not to form
17 an impression until they hear all the evidence, let's be
18 honest with each other. It's not looking too good for me at
19 that particular juncture, is it? I mean, we've got a witness
20 who puts me there and says I shot this person; right?

21 A Right.

22 Q Well, let's assume that instead of Juhasz and Ingram
23 I hired Matlock. Okay. And I like to use Matlock because

1 he's always pulling stuff out of his pocket. So he gets up
2 and he talks to this witness and he says, 4:00 o'clock on
3 January 1st, huh? Yep. You saw the whole thing, huh? Yep.
4 And then he pulls out a receipt from Kaufmann's at the
5 Southern Park Mall with the guy's credit card impression
6 showing that he was down there buying a new suit. And the
7 guy kind of goes, well, yeah, I guess I was at the mall. Now
8 it's not looking quite so bad for me as it was five minutes
9 earlier, was it?

10 A No.

11 Q Okay. I may not even have to get on the witness
12 stand to say I didn't do anything, because if that's their
13 case, a jury may find reasonable doubt. Do you see how all
14 that works?

15 A Yes.

16 Q I asked this question with some trepidation because
17 sometimes I get a no, but usually I get a yes. Ever been
18 accused of anything you really didn't do?

19 A I'm sure I have in my lifetime.

20 Q I'm not talking about crime or anything, just
21 somebody says here's what she did.

22 A Yeah.

23 Q And your like, how does that make you feel?

1 A It depends what it is. Mostly mad.

2 Q If that same thing happened to somebody you cared
3 about, husband, child, family member, and I'll use my kid as
4 an example rather than yours. Let's say that Mr. Malamisura,
5 the school principal, calls and says, John, do you want to
6 explain to me why Mike has a nine millimeter semiautomatic
7 handgun in his locker? You know, I'm going to kind of go
8 back like this and because that's not Mike. Okay. And Mr.
9 Malamisura is a nice guy, but I'm not just going to take his
10 word for that because -- and the reason I bring that up is,
11 it's sort of like the presumption of innocence. Do you see
12 that? That you have to sort of go into the situation
13 assuming that the person in this situation, my son Mike
14 didn't do what they're accused of, okay, and test that
15 evidence. I mean, if he comes forward with a substantial
16 amount of evidence that convinces me beyond a reasonable
17 doubt, then if I'm being fair about it I have to change my
18 mind, correct?

19 But prior to that point in time I'm not just going
20 to take his word for it. I'm going to test the evidence;
21 correct?

22 A Uh-huh.

23 Q All right. As a juror you kind of have to do the

1 same thing with the State's evidence. Are you prepared to do
2 that?

3 A (Witness nods head affirmatively.)

4 Q You don't have any problem at the end of the trial,
5 let's say that these guys don't prove their case in your
6 mind, you don't have any problem looking them in the eye and
7 saying sorry, guys, you didn't prove the case?

8 A Right, no.

9 Q We talked a little while ago about not letting those
10 couple of news reports that you might have heard influence
11 how you look at the case. And I think you may have been
12 asked about this but I want to make certain.

13 If you feel sympathy in this case, we like to say as
14 lawyers that we would like you to come in with your mind as
15 blank as that easel back there behind you so that we can just
16 give you the evidence and you make a fair decision.

17 A Uh-huh.

18 Q But that's not really possible. The best we can do
19 is to say look, the experiences that you have, the thoughts
20 and feelings that you have, can you just sort of push them
21 off to the edge of the paper so you can focus on the evidence
22 that we put there? All right?

23 Now, I bring that up because nobody is going to say

1 to you, if you're selected as a juror, that you cannot or
2 should not feel sympathy maybe for Mr. Fingerhut, maybe for
3 his family members, maybe for Donna Roberts because she's the
4 person accused of the crime. However you feel about it, the
5 question is, if you have those feelings of sympathy, can you
6 promise that you'll push them off to the edge of the paper
7 and decide the case objectively based on the evidence?

8 That's the only fair way to do it; would you agree?

9 A Based on facts.

10 Q Based on facts. Exactly. I mentioned before that
11 because of the way the box works that Donna may not have to
12 testify. Let's take the flip side of that for a second. If
13 she does testify, would you agree, she's like any other
14 witness in the case? Do you automatically say I'm not going
15 to believe anything this woman says because she's the
16 Defendant and she's got a stake in the outcome?

17 A No.

18 Q That could be one thing that in fairness you would
19 take into account; right? She may have a stake in the
20 outcome, and you may or may not decide to believe her. But
21 my point is, can you promise to treat her like any other
22 witness?

23 A Yeah.

1 Q Here's another silly little thing that we have that
2 I think we don't tell jurors enough about. Have you heard
3 the word indictment before?

4 A Yes.

5 Q You know that there's an indictment in this case, or
6 do you?

7 A No, I didn't know. But --

8 Q Well, let's talk about that for a second. Have you
9 heard the phrase grand jury before?

10 A Yes.

11 Q The grand jury issues a piece of paper called an
12 indictment. It tells the defendant, it's the way in our law
13 that when the government says you do something wrong, that
14 they give you a piece of paper saying, here's what we say you
15 did wrong.

16 A Right.

17 Q The body that issues that indictment is called a
18 grand jury. Okay. But it's different from the kind of jury
19 that you would sit on in this case because it only hears sort
20 of one-side of the evidence. The prosecution is there, and
21 the witnesses they choose to bring are there. But Mr. Ingram
22 wasn't there. I wasn't there. Donna Roberts wasn't there.
23 And they didn't hear any cross-examination of those

1 witnesses, those grand jurors didn't. Nor did they hear
2 anything that Donna Roberts might have had to say about that.

3 Now, I bring that up because I want to make certain
4 that, since it's kind of a one-sided proceeding you're not
5 going to regard the fact that since there's an indictment in
6 this case that somehow that means she's guilty?

7 A No.

8 Q And, again, as you keep saying, base it on the facts
9 that you hear in here; correct?

10 A Right.

11 Q Now, you do some volunteer fire work, and I assume
12 that you have some acquaintance with some police officers?

13 A I guess, yes.

14 Q I mean, I assume if nothing else you know the guys
15 from Weathersfield because if you get called out on a fire
16 sometimes they're there?

17 A I just went through training so -- but there was a
18 Weathersfield cop in my class.

19 Q Here's why I bring it up. If you hear a police
20 officer -- we just talked about a few minutes ago about if
21 Donna testifies you judge her testimony independent of who
22 she is, that is the fact that she is the Defendant.

23 You have to do the same thing with police officers

1 or anybody else who comes in here and testifies; do you see
2 that?

3 A Uh-huh.

4 Q Even somebody that the law calls an expert witness.
5 Okay. And to clue you in on that, an expert witness is
6 anybody who, because of some specialized training or
7 education or experience, knows more about something than the
8 rest of us do. Okay?

9 You can have an expert witness on automechanics.
10 Anybody who would talk to me about the operation of cars
11 would, in my estimation would be an expert witness because
12 they know more than I do. But, and here's the point: Just
13 because they're an expert witness doesn't mean that you have
14 to buy everything that they're saying hook, line and sink.
15 You could still use your reason and common sense to decide
16 with whether, to decide whether what they're telling you
17 makes sense. Okay?

18 A (Witness nods head affirmatively.)

19 Q If you get a guy who comes in and says, I have a
20 Ph.D. in astrophysics and space science from the
21 Massachusetts Institute of Technology. And in this imaginary
22 case for some reason the tides are important. And he says,
23 listen, I'm telling you that it was high tide and I'm basing

1 that upon the fact that the sun rises in the west and sets in
2 the east. Well, he may be a Ph.D. from M.I.T., but if he
3 says the sun rises in the west and sets in the east you can
4 say, I'm not buying what he's selling. Okay. Do you feel
5 comfortable taking that responsibility?

6 A (Witness nods head affirmatively.)

7 Q Two more things and then you're going to be out of
8 here. We've already talked about reasonable doubt so I don't
9 want to belabor that except to this extent. We talked about
10 the box and about them filling the line up.

11 Another way to think about that is, if you've made
12 important decisions in your life, and I'm sure you have,
13 before you make them you sort of make a checklist of pros and
14 cons. I don't care whether you do it on a piece of paper or
15 your mind's eye, you don't just walk into something; right?
16 I mean, you just don't walk out and say, I want a new car; I
17 bought a new car. You have to think about, can I afford it,
18 the interest rates and all that kind of stuff. You kind of
19 have to do the same thing with reasonable doubt. You make a
20 checklist. On one side are going to be the reasons why the
21 State says you should find this person guilty.

22 On the other side, they are going to be doubts about
23 the case. They can be doubts that Mr. Ingram and I bring up.

1 They can be doubts that you think about yourself. They can
2 be doubts that you think about back in the jury room after
3 you talk to the other jurors, things that they may bring up.

4 My point is simply this: They do not have to prove
5 their case beyond all doubt, beyond a shadow of a doubt or
6 imaginary doubt or possible doubt, but they have to prove it
7 beyond any doubt that's based on reason and common sense. So
8 what you really have to do when you analyze their case is
9 look at the evidence and talk about those doubts that you
10 have on that side of the checklist. And after talking about
11 the first one you might say, you know what, I thought that
12 was a reasonable doubt but now that I think about it that's
13 just simply foolish, so I'm going to scratch it off.

14 If you have, when you're done, one doubt left, it
15 could be more but if you have at least one, then you see they
16 have not proved their case beyond a reasonable doubt. No
17 problem holding them to that high standard?

18 A No.

19 Q I think you've heard today the phrase called
20 circumstantial evidence, have you not?

21 A (Witness nods head affirmatively.)

22 Q Everybody has a shtick they like to do ,and here's
23 mine. I want you to pretend for a second that it's a summer

1 afternoon at my house, one of those late summer days where
2 the sun is shining but it's starting to blow and you know
3 you're going to get one of those late afternoon thunderstorms
4 in an hour or so.

5 So I'm out in the kitchen, and all of a sudden I
6 hear a crash in the living room. As I go in to investigate
7 here comes Mike's cat running out between my legs hell-bent
8 for leather. I go in, I have kind of a big, long living
9 room. I look to the left. There's my son Mike going like
10 this. I look to the right and falling off of the mantel is
11 one of my wife's Norman Rockwell plates. And all the king's
12 horses and all the king's men aren't going to put that back
13 together.

14 Now, I suppose circumstantially you could conclude
15 that Mike was throwing the ball in the house again like he's
16 been told 75,000 times not to do, hit the plate, broke it.
17 He's going, mom's going to kill me. Dad's going to kill me.
18 And the cat is scared.

19 But it could also be that the cat knocked the plate
20 off and figured, I'm in trouble, so it's running away. Mike
21 is going oh, boy, dad told me not to have that cat in house
22 up on that mantel.

23 Or it could be that the wind from that approaching

1 thunderstorm knocked the plate off. The cat thinks it's
2 going to get blamed and Mike thinks he's going to get blamed.
3 All of those are possibilities based upon the few facts that
4 I gave you, correct?

5 A Yes.

6 Q My only point of telling you that whole story is,
7 while it is possible and while the State may ask you to take
8 circumstantial evidence and say, use this evidence to find
9 somebody guilty beyond a reasonable doubt, if you have doubts
10 based upon that circumstantial evidence that are -- and those
11 doubt are reasonable, they're based on reason and common
12 sense, then they haven't proven their case with
13 circumstantial evidence; you agree with that?

14 A (Witness nods head affirmatively.)

15 Q No problems holding them to that standard?

16 A No.

17 Q Anything that we have talked about, any questions
18 that you have about how all this works? Any other concerns
19 you have about serving as a juror?

20 A No.

21 Q I appreciate your time. Thanks.

22 THE COURT: Pass or side bar?

23 MR. JUHASZ: Pass.

1 MR. BAILEY: Pass.

2 THE COURT: Pass. Very good. You will be
3 in the poll from which this jury will be selected. You
4 should call the number given to you after Friday night at
5 4:30. Sometime next week hopefully we can get everybody in
6 here to pick the jury. You're probably aware, we need about
7 34 people who have gone through this process that are
8 potential jurors from which to choose that 12-person jury.

9 I would again remind you not to discuss anything
10 about the case, nor read anything in the newspaper, watch
11 anything on TV in the meantime. Okay. Thank you very much.

12 * * *

13 WHEREUPON,

14 KASEY S. KELLY

15 being first duly sworn, according to law, was examined and
16 testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Good afternoon. You're Kasey Kelly?

20 A Yes.

21 Q Kelly, you read that sheet that was given to you?

22 A Uh-huh.

23 Q This case is a charge of aggravated murder filed

1 against Miss Roberts with specifications.

2 Under the law of Ohio just because a person is
3 convicted of murder does not mean that they face the death
4 penalty. It's only under certain specific circumstances
5 where the Legislature has passed the law on aggravated murder
6 where they list certain conditions that if they occur, we
7 call specifications.

8 An example is, if you murder a person who happens to
9 be the Governor of Ohio, the State would have to prove beyond
10 a reasonable doubt all the elements of the aggravated murder
11 charge beyond a reasonable doubt, together with the
12 specifications that he was the Governor. That would then put
13 the case into the second hearing where the jury would be
14 called upon to determine whether the aggravating
15 circumstances outweigh the mitigating factors.

16 Aggravating circumstances are reasons a person
17 should be put to death. And the mitigating factors are
18 reasons why they should not, he or she should not.

19 The burden throughout the trial of proof is upon the
20 prosecutor by the standard of beyond a reasonable doubt. The
21 defense can sit and do nothing if they care to.

22 Now, if a person, if you get to the second part of
23 that trial, if the person were found guilty, if it turned out

1 that you had someone on the jury that thought that whenever a
2 person kills someone else they should forfeit their life,
3 that's not the law and the Defendant could never get a fair
4 trial that way.

5 If you got to that same point and you had a person
6 on there that could under no circumstances make that
7 decision, even though the law may require that to be
8 considered anyways, then the State could not get a fair
9 trial. So even though this is very premature, because we
10 don't know what this jury is going to do on the case itself,
11 if the State fails to prove its case in the jury's mind
12 beyond a reasonable doubt they would come back with a not
13 guilty verdict.

14 But if it came back with a guilty verdict, there's
15 no way at that point to find out which jurors feel what about
16 the death penalty. So we go into all this questioning at the
17 beginning of the trial knowing that it may not even arise.
18 Okay.

19 Now, whatever your personal views are of the death
20 penalty are fine. We all have our own personal views, as
21 does everyone else probably. The question is, could you sit
22 on this jury and follow the law which says, as I told you,
23 certain circumstances of this, the aggravated murder count

1 here or counts have specifications attached to them. No
2 matter what your personal view is, if it isn't to one side or
3 the other to the extent that you could not set your personal
4 views aside and follow the law. It's the only way both sides
5 can get a fair trial. You may be able to do that. You may
6 not be able to. That's the purpose of the questioning to
7 find out.

8 The other area that they will ask you about is
9 whether you've been subjected to much pretrial publicity
10 about this matter. And if so, do you have your mind made up?
11 Because this case has to be tried on the evidence and the law
12 that will be given in this courtroom.

13 If you have half the jury that have something
14 sticking in their mind from something they've read, you know,
15 in the past, and that comes into the trial, somebody again
16 isn't going to get a fair trial. Okay. Good enough.
17 Mr. Becker.

18 MR. BECKER: Thank you, Your Honor.

19 EXAMINATION

20 BY MR. BECKER:

21 Q Good afternoon, Miss Kelly.

22 A Hi.

23 Q First of all, let me introduce myself. I'm Chris

1 Becker. I'm from the county prosecutor's office. This is
2 Mr. Bailey. I assume you remember Ken Bailey from about two
3 weeks ago when you were here on a Tuesday. You all met in
4 the big courtroom down the hall. We're here representing the
5 state of Ohio. Mr. Ingram and Mr. Juhasz as well were there
6 as well as their client, Donna Roberts. So you're familiar
7 with all of us.

8 What I want to start out by saying is that we are
9 going to ask you some personal questions. We may not ask
10 you what books you read on the side, but would do need to
11 know some things about you that we believe may be able to
12 affect your ability to sit as a fair and impartial juror in
13 this case. And both sides are going to get a chance to do
14 that.

15 It's very important that we go through this process
16 now because if you are selected as a juror to sit on this
17 jury trial, we won't get to ask you the case, you know, the
18 questions once the case gets started. And as the Judge said,
19 it's sort of a two-phase process.

20 The first phase you may ultimately decide that
21 there's no guilt here, and that there's no reason to go on to
22 the second phase, and she'll go home and we'll go home and
23 move on to our other work and our other cases. But if you

1 get to that second phase and if you do find by proof beyond a
2 reasonable doubt that she's guilty of the crimes and some of
3 the specifications, which require the imposition of the death
4 penalty, we have to know how you would react in that
5 situation, whether or not you could actually go through with
6 the death penalty.

7 And there's really no right or wrong answers. We've
8 been going on this process now for about two weeks. And a
9 lot of people have come in here and said, I can't do it. I
10 can't impose the death penalty. Or, I can't judge someone
11 like that. Or other people have come in and said, if you are
12 convicted of killing someone you should get the death penalty
13 and that's it, and they won't consider the other options.

14 So I guess what I'm trying to say to you is, don't
15 worry. There's no right or wrong answers. You're not being
16 graded. You're not going to get more money for serving on
17 jury duty for giving us the right answers or not. We just
18 want you to be open and honest with us and tell us how you
19 really feel about these, because it's conceivable in this
20 case that you may be the person or one of the other 12 people
21 in that jury room, and it may come to a point where you're
22 going to have to sign a piece of paper that would call for
23 the death penalty. And I know that's a very awesome

1 responsibility. But this is a very important case. One
2 person is already dead. And the fate and the life of another
3 person, the Defendant in this case, rests in potentially your
4 hand and the hands of your fellow jurors. So we have to ask
5 you these questions. They may seem like they're probing.
6 They may seem like they're too personal or too much of a
7 nuisance, but we have to know. And it's only fair to us and
8 the State, because we prosecute the crimes. And it's only
9 fair to Miss Roberts, because it's ultimately her life that
10 hangs in the balance here in this courtroom.

11 I guess the first thing, and by all means, if you
12 have any questions or if you, if I'm not making myself clear,
13 by all means stop me and say, I don't understand your
14 question, you big mouth attorney. And I can't understand
15 what you're talking about. So if you don't understand, just
16 stop me and say I don't understand.

17 A All right.

18 Q The way we'll do this is, we're going to go into two
19 areas and then we'll cover sort of general stuff. But the
20 first is going to be particularly about the death penalty.

21 Now, we're going to be real presumptuous here
22 because we may not get to that point. And that depends on
23 you and your fellow jurors and what evidence we present to

1 you to begin with. But let's assume we prove her guilt and
2 we prove her guilt as it relates to these death penalty
3 specifications. Now we're into this second phase.

4 Do you believe, if the facts in the case warranted
5 it and the law permitted it, could you go in the jury room
6 and sign the verdict form, a piece of paper calling for the
7 imposition of the death penalty?

8 A I think if it was a certain circumstance, I could.
9 But it would depend upon what the circumstance was.

10 Q Okay. And that's fine. And that's what we're sort
11 of trying to figure out here. Because every case is
12 different. Every defendant is different. The facts of every
13 case are different. In fact, in many cases you can have two
14 people convicted of what we call capital murder and two
15 different penalties given out. Juries are different. Facts
16 are different. The evidence is going to be different.

17 This case involves and the allegation is that, the
18 allegation against Miss Roberts is, and we still have to
19 prove that before we get to the second phase, but if we prove
20 the allegations which are that she aided or abetted, and we
21 will tell you right now, she did not pull the trigger that
22 killed the individual who is dead in this case. She didn't
23 do it. But the law in Ohio is that if we get to that case

1 where we prove those elements and prove the specifications
2 beyond a reasonable doubt, that one of the penalties you
3 could consider is the death penalty. Now, you have three
4 other options you can consider, and you have to weigh them
5 equally. You have life with no parole. Life with no parole
6 after 30 years, and life with no parole after 25 years.

7 This case involves the death of just one person.
8 There's two murder counts but it's sort of two different
9 theories or two different ways to get to that second phase,
10 if we prove those allegations in the first phase.

11 Is this the type of case where you believe if the
12 facts warranted it and the law allowed it, you could sign a
13 piece of paper calling for the death penalty? There's going
14 to be a lot more information that we're going to be giving to
15 you if we get to that phase and if we prove our case beyond a
16 reasonable doubt in the first phase. But I guess what I'm
17 asking you is, the framework that we're talking about is
18 going to be one death and that this person is not the
19 shooter, not the actual killer.

20 Ohio law permits it, if we prove certain things
21 beyond a reasonable doubt we have to prove what are called
22 aggravated circumstances, and they have to outweigh by proof
23 beyond a reasonable doubt the mitigating factors, the good

1 things about her. And we'll present some bad things that we
2 feel are applicable, which are basically the aggravated
3 circumstance of this case, that she aided and abetted another
4 in causing his death.

5 This isn't going to be a case where you're going to
6 hear five children were killed or, you know, this isn't
7 Saddam Hussein who killed numerous people. This is just one
8 death, and it's against the person who didn't even pull the
9 trigger.

10 Now, how do you -- are you going to be able to
11 consider the death penalty, or do you think that that's not
12 the kind of case that you feel the death penalty should be
13 imposed?

14 A Right now with that little bit of information I
15 probably wouldn't want to consider the death penalty, because
16 I don't think that I understand enough about what actually
17 happened.

18 Q So you need to have the facts before you?

19 A (Witness nods head affirmatively.)

20 Q Assume we can get to a point where maybe we can
21 convince you if we prove it beyond a reasonable doubt?

22 A If there was, I'm not saying that I wouldn't if I
23 didn't think the circumstances warranted it, but with that

1 little bit of information I don't think that I would. If you
2 came to a point where the evidence was there, I mean, it
3 might, I might consider that.

4 Q Okay. Let me ask it a different way. And it's real
5 hard here because, you know, we can't -- I can't tell you
6 everything about the case. And I know -- and we can't get
7 into really the meat, I guess the facts of the case.

8 But if you were put in the position, again, assuming
9 that we get to that second phase, which we may never get to,
10 but assuming we're in that second phase and we present to you
11 evidence about the aggravating circumstances and they present
12 to you some mitigating evidence, or maybe they don't, when
13 you go back to that jury room and you're seated there are you
14 going to give the death penalty, or are you going to put that
15 to the side and say, listen, I've got these other options
16 here. I've got life with no parole. Life with parole after
17 25 and life with parole after 30 years. I can't consider the
18 death penalty in this kind of case.

19 MR. INGRAM: I'm sorry but I -- I must
20 hesitate to object. The only reason is, the question says
21 you have some aggravating circumstances over here. You have
22 some mitigating factors over here. It says nothing about
23 weighing, nothing about --

1 MR. BECKER: No, no. Let me rephrase the
2 question. Let me rephrase it.

3 Q Again forgive me, because we have to talk in these
4 jumbled terms and these legalese terms.

5 Let's assume that we proved our case beyond a
6 reasonable doubt that she's guilty of the crimes and the
7 specifications that make her eligible for the death penalty.
8 It doesn't mean you automatically give it but she can be
9 considered for it. And that's what we do in this second
10 phase. So now we're in the second phase and the State has
11 to prove, we still we have to prove again --

12 A Can I ask you a question?

13 Q Sure.

14 A Are you asking me whether I would give it or whether
15 I would consider it?

16 Q Would you consider it?

17 A Then I can say, yes, I would consider it.

18 Q And that's what we want to know. We want to know,
19 would you consider it? In this particular case, given the
20 fact that there's just one death, and the allegation is that
21 she's not even the actual killer, just an aider and abetter,
22 a helper. That's the allegation. You would consider the
23 death penalty?

1 A (Witness nods head affirmatively.)

2 Q Now my follow up question to that is, would you
3 really consider it or would you be more leaning towards these
4 other life options and say, well, I'll consider the death
5 penalty but, you know, they proved beyond a reasonable doubt
6 the aggravating circumstances outweigh the mitigating
7 factors, but I'm going to take the easy way out and vote for
8 life in prison?

9 A Well, going with the information that you've given
10 me, I can say with that little bit of information right
11 now --

12 Q Right.

13 A -- I would lean towards maybe the life imprisonment
14 charges. But if there were more information, I mean, I can't
15 really give you an answer whether I would or I wouldn't
16 without any more information about what actually happened and
17 what the circumstances were.

18 Q So you would be open to consider all of the options?

19 A Right.

20 Q And it's important because, believe me, we've had
21 people come in here who wouldn't be fair to either side. We
22 have a right for the jurors to be fair to us to consider all
23 four of those options if we get to that stage and if we prove

1 beyond a reasonable doubt that the aggravating circumstances
2 outweigh the mitigating factors. And it's sometimes hard.
3 One of the judges I know that was first on the bench, he told
4 me one of the hardest things he ever had to do was to sign a
5 death warrant, which is what happens after somebody gets
6 that. He let it sit on his desk for days before he did it, a
7 whole day.

8 And that's the kind of mind frame you're going to
9 have to put yourself into. Imagine sitting in that jury room
10 with a piece of paper and your fellow jurors, your 11 fellow
11 jurors have said, we believe the aggravating circumstances
12 outweigh the mitigating factors and we believe that this case
13 warrants the death penalty, and now you're the last person,
14 you're going to be able to sign that verdict form if, if we
15 prove to you that the aggravating circumstances outweigh the
16 mitigating factors beyond a reasonable doubt?

17 A Yeah.

18 Q You can put your pen to paper and sign that form?

19 A Yeah, if you prove to me that without a --

20 Q Beyond a reasonable doubt the aggravating
21 circumstances outweigh the mitigating factors?

22 A Right.

23 Q Because you understand the reason we're going

1 through this process is, in two or three weeks or four weeks,
2 or whenever we get there, if we get to that stage we don't
3 want to hear a knock on the door and say, I can't do this.
4 But you feel you could do that?

5 A Right.

6 Q Okay. Now, this particular case has received, as
7 most homicides do, some publicity. And I think you've heard
8 about this case maybe in passing?

9 A No. I don't watch the news.

10 Q I thought I saw on your questionnaire that you did.
11 So you don't come in here with any preconceived notions of
12 guilt or innocence? You've not heard anything about this
13 case through anybody you work with or anybody you've spoken
14 to?

15 A No.

16 Q When you came in here about two weeks ago, did you
17 hear anyone speaking about this case when you were down in
18 the other courtroom?

19 A No.

20 Q So you have really no idea about this case?

21 A Right.

22 Q And in a lot of ways that's a good thing, because
23 some people come in here and say, I saw it on TV or the

1 newspaper and I couldn't be fair.

2 You've been, I guess, not exposed to that so that's,
3 that's very good, at least in one respect.

4 I notice that you, you've lived in some, quite a bit
5 of different places around the country. I saw you were in
6 Orlando and Huntersville, which would be near Charlotte;
7 right?

8 A It's just north of Charlotte.

9 Q Off of 77 there. Is that relating to your bakery?

10 A No.

11 Q Or you just happen to move a lot?

12 A Uh-huh.

13 Q Mostly for jobs?

14 A No.

15 Q Just wanting to?

16 A I moved to Pittsburgh because I went to school out
17 there.

18 Q Right. The Culinary Institute.

19 A And I moved to Orlando because I did my externship
20 down there. Then I had some friends move to Huntersville,
21 and I moved up there.

22 Q And now you're back here. And I didn't really,
23 wasn't clear on your questionnaire. What is that you do now?

1 A I'm a cake decorator.

2 Q Here locally some place?

3 A At Super Kmart in Niles.

4 Q Okay. And do you still live up in Southington?

5 A Yes.

6 Q Now, this is a criminal case and, as with most
7 criminal cases, you're going to hear -- well, let me start
8 again.

9 In all criminal cases you're going to hear some
10 certain, some concepts that you might have heard on
11 television or read in the newspaper, or read in novels
12 perhaps that you've read or books that you've read. And one
13 of the terms you're going to hear is reasonable doubt. And
14 I'm assuming you've heard of that, either through school or
15 reading the newspaper, television or reading a book somewhere
16 you've read something about that.

17 The Court is going to give you instruction on
18 reasonable doubt and what it is. And it's a pretty simple
19 concept to state, but to actually see it in action it's
20 sometimes a very difficult concept to grasp.

21 One of the professors that I had in law school sort
22 of made it sound like it was just a glass of water. And we
23 used to talk about burdens of proof. And there's really

1 three burdens of proof under the law. There's preponderance
2 of the evidence, which is basically one drop over half. As
3 soon as you get to half and you add a little bit of water,
4 that's preponderance of the evidence. It's just who, who has
5 more evidence.

6 Then there's a crazy concept called clear and
7 convincing evidence. I don't know if attorneys even know
8 what that is. But my professor used to say, well, that's
9 about 75 percent. It's three quarters full with the glass.

10 And then we have reasonable doubt. And reasonable
11 doubt is the one that everyone is going to have a different
12 idea of. Reasonable doubt is not having the glass completely
13 full, because that's all doubt. And I couldn't prove to you
14 that, probably that I'm Chris Becker beyond all doubt. I
15 could show you a license. But you might say, well, how do I
16 know that that's not forged or he didn't buy that. Or I
17 could give you a fingerprint and you can compare it to some
18 other fingerprint, but even experts sometimes argue over
19 fingerprints.

20 So there's very few things that I could prove to you
21 beyond all doubt. It's sort of like, I have an eight-year
22 old at home who's a real inquisitive young boy and he may ask
23 me questions about why the sun comes up in the east and sets

1 in the west. And I explain it to him and he still doesn't
2 believe me. And I can show him all week, it's coming up in
3 the same spot and going down in the same spot, and he's just
4 going to ask me more questions.

5 But reasonable doubt is going to be pretty close to
6 the top. And it's going to change for every person. It may
7 be a quarter an inch from the top for some people. It may be
8 only an inch from the top. If you think of it numerically,
9 maybe 90 percent certain. Maybe 95 percent. Maybe 98
10 percent for some people. Everybody is going to have a
11 different idea of what reasonable doubt is.

12 In both phases, if we get to the second phase and in
13 the first phase, again, if we get to the second phase we have
14 to prove our case beyond a reasonable doubt. Not all doubt.
15 I don't have to fill that glass so that water is coming out
16 over the edges.

17 If we're in the first phase and we prove our case
18 beyond a reasonable doubt, we have to prove the elements.
19 There's usually five or six elements to every crime. And we
20 have to fill those glasses up, reasonable doubt for every one
21 of those elements.

22 Now you're going to get to the second phase,
23 assuming you find proof beyond a reasonable doubt in that

1 first phase, now we're going to get to a second phase. And
2 again, it's going to come to reasonable doubt. Not all
3 doubt. I can't, I'm going to tell you right now I probably
4 can't fill that up to where it's to the top and overflowing.
5 But would you feel comfortable by proof beyond a reasonable
6 doubt signing a death verdict?

7 A Without ever having been in that type of situation
8 before.

9 Q Right.

10 A I think right now at this point I could say yes.

11 Q And you understand that if we get to that point, and
12 I'm assuming -- again, we're being presumptuous here, but I'm
13 assuming we'll get to that point. If we get to that point --
14 keep in mind, you can't knock on that door and say, wait a
15 minute, I want out of this. This isn't what I bargained for.
16 Because it may be a very difficult situation for you. And
17 the only reason I keep harping on this a little bit is
18 because I do sense some maybe hesitation in your voice.

19 A I think the hesitation is just that I've never come
20 across anything like this before and I don't have any kind of
21 previous experience.

22 And in the past, I've come across different types of
23 circumstances where I would say, oh, if this happened I would

1 do this or I wouldn't do that. But when that circumstance
2 actually happened, I might have not felt as confident about
3 it.

4 Q You reacted differently to situations that maybe you
5 thought about beforehand, and then when they actually arose
6 it wasn't even at all what you expected?

7 A Right.

8 Q And your reactions were much different than what you
9 maybe would have expected?

10 A Right.

11 Q That's fair enough. Again, there's no right answers
12 here. No wrong answers. One of the other things that goes
13 along sort of hand-in-hand with reasonable doubt is what we
14 call the presumption of innocence.

15 And again, every criminal trial and every criminal
16 defendant has what's called the presumption of innocence.
17 And sort of the easiest way to say that is, and again, I'm
18 not saying that this is going to happen, but it might happen,
19 is that the State presents its case. Mr. Bailey and I will
20 call witness after witness here. And we may be here two
21 weeks. And Mr. Ingram and Mr. Juhasz may be over there
22 reading their horoscopes and doing crossword puzzles and not
23 say a word. I highly doubt if that's going to happen but

1 they can do that. And we can present to you 25 or 30
2 witnesses and 300 exhibits. And you may still sit there and
3 say, I have reasonable doubt in my mind that the elements and
4 the offenses have been proven. You would have to find Donna
5 Roberts what?

6 A Not guilty.

7 Q Right. You don't have a problem with that concept,
8 do you?

9 A No.

10 Q I assume that you believe that all defendants should
11 be given the presumption of innocence unless and until their
12 guilt is proven beyond a reasonable doubt; correct?

13 A Right.

14 Q Sort of hand in hand with that is, is that
15 presumption of innocence. And I guess if you go back to the
16 glass example. Mr. Bailey and I are the ones that have the
17 responsibility of filling that glass up to that one inch or
18 half inch line near the top, to fill that.

19 They don't have any responsibility at all to put
20 anything under those glasses, to put any water in. And they
21 don't have to take any water out either. We have to prove
22 the case on its own merits and through our evidence and
23 through our testimony. Do you agree with that?

1 A Uh-huh.

2 Q This is a case, and you're already well aware from
3 the questionnaire and from when I've spoken to you here
4 today, that involves the death of an individual. There is a
5 dead individual. And during the course of this trial you
6 will see photographs of a deceased individual. Some people
7 don't want to be involved in that. They don't want to see
8 that. It may evoke emotions of sympathy.

9 And on the other side of that coin, Miss Roberts is
10 also, her life is on the line because of the nature of the
11 charges and the potential penalty. And, again, some people
12 may feel sympathetic for her.

13 Do you feel you will have a problem with being
14 sympathetic to either the deceased and his family or
15 Miss Roberts and her family?

16 A No.

17 Q You won't -- and I ask this question of everyone.
18 You won't feel sympathetic for Mr. Fingerhut, the deceased in
19 this case, because of the manner of death. He died. Or
20 because in fact he's dead and there's an allegation of murder
21 here, actually it's aggravated or capital murder, you
22 wouldn't say, well, I know the State did prove some of these
23 things but they didn't prove a couple of these other things.

1 They didn't fill up their glasses all the way. You know
2 what? I'm going to find Donna Roberts did it though, anyway,
3 because I feel sorry for Mr. Fingerhut, the manner he died.
4 And if you had to say not guilty because we didn't prove our
5 case and fill those glasses up, you could do that?

6 A All right. I'm confused. Did you just -- can you
7 just ask me the question that you're going to ask me?

8 Q Yeah. Are you going to be sympathetic for either
9 party and not require --

10 A No, I don't think I'm going to be sympathetic.

11 Q On the other side, if we prove our case beyond a
12 reasonable doubt you wouldn't find her not guilty because you
13 felt sorry for her and because you felt you're going to have
14 to go into this second phase and perhaps find her, or impose
15 the death penalty if we prove the elements beyond a
16 reasonable doubt in that part?

17 A No.

18 Q I know that's kind of a lot. You're not going to
19 find her not guilty because you may have to get to a point
20 that you're considering the death penalty if we proved our
21 case beyond a reasonable doubt?

22 A No, I wouldn't do that.

23 Q This case involves really two -- well, there's four

1 charges in the indictment. And let me ask you right off.

2 And again, there's no right or wrong answers. If you don't
3 know, you don't know. Do you know how an indictment is
4 handed down or how an indictment is issued?

5 A No.

6 Q Okay. There is a body called the grand jury. I'm
7 assuming you've heard of grand jury. The grand jury is
8 nothing more than up to 14 individuals, nine of whom vote.
9 It takes seven of the nine voting members to issue basically
10 a piece of paper. And that piece of paper describes the
11 charges. Prosecutors are not in the room when the grand jury
12 votes, but we're in there for everything else. We present
13 the evidence. Although Mr. Bailey and I personally didn't --
14 well, I was in there but Mr. Bailey wasn't. But there were
15 other prosecutors in the room at the time of the presenting
16 of the evidence there, but there was no judge there. Miss
17 Roberts was not there. Her attorneys were not there. It was
18 a one-sided affair, let's put it that way.

19 The indictment in this case is just merely an
20 accusation. It's the mechanism which puts all of this into
21 play. And it's what gets the attorneys involved. It's what
22 gets the courts involved. They give it a number down at the
23 clerk's office.

1 The fact that she's accused of this, and the fact
2 that we're here talking about potential penalties, including
3 the ultimate penalty, death, that doesn't necessarily bring
4 to you any notion that she must be guilty of something?

5 A (Witness shakes head negatively.)

6 Q So the fact that we're here and we're having this
7 discussion about the death penalty and life options, you
8 understand that you can still be free to find her not guilty
9 and not even get to that phase?

10 A Right.

11 Q All right. Now, as I mentioned to you, this case
12 involves an accusation that she is not the shooter. An
13 accusation that she is an aider and abettor.

14 I believe the testimony is probably going to show
15 you in this case that she wasn't even in the location where
16 the death occurred, in the actual home or the structure.
17 Does that change any of this for you? Does that make it
18 easier or harder? Or are you still under the mind-set and
19 the framework that you could, if we prove our case beyond a
20 reasonable doubt in the first phase, and if we get to the
21 second phase, if we prove beyond a reasonable doubt that
22 these bad things, these aggravating circumstances outweigh
23 the mitigating factors, you could still sign the death

1 penalty?

2 A Right.

3 Q Now, most criminal cases also have in them some
4 circumstantial evidence. Do you have an idea of what
5 circumstantial evidence is?

6 A Vaguely.

7 Q It's a little bit like -- let's say we're out here
8 on the street, and it's High and Pine Street right here, and
9 -- I'm sorry, Park and High Street. And we're standing there
10 at the intersection. You and I are talking. And we're
11 looking at each other. The intersection is off to our right.
12 We really don't, aren't paying attention, and all of a sudden
13 we hear brakes skid and we hear a crash. And we look over
14 and we see two cars that are smashed into each other. We
15 didn't actually see the accident but we heard it. And we
16 heard tires screeching. We heard metal crashing. And we see
17 two cars there. That's kind of circumstantial evidence.

18 Another example that sometimes I use is, I have four
19 kids. And I have two daughters that are very close in age
20 and I have a son who's older and a younger son who's an
21 infant. Sometimes, and this probably happens more than it
22 should, but my son will swing a rope around with a baseball
23 on the end of it or he'll swing a bat down in the basement

1 where he knows he's not supposed to. And of course
2 invariably he will hit one of his sisters, and one of the
3 sisters may be crying. And I'll go downstairs and my wife
4 will go downstairs and we'll see one of my daughters crying,
5 holding their head. My son there with an orange wiffle ball
6 bat, and the other one pointing to my son saying he was
7 swinging the bat. He was swinging the bat.

8 Now, let's take my oldest daughter out of the
9 equation. It's just my youngest daughter, she's holding her
10 head and my son has got the bat. The circumstantial evidence
11 and the inference is that he was swinging that bat around and
12 he hit my daughter.

13 Now, we can make other inferences from that. We can
14 make an inference that my daughter had the bat herself and
15 would throw it up in the air and she was throwing it up in
16 the air and it dropped down on her head and she's trying to
17 catch it and my son just picked it up to get it away from
18 her, and he gets caught in the middle. So there's other
19 inferences you can draw; correct?

20 A Right.

21 Q And what we're talking about here is reasonable
22 inferences. Certainly an alien or a ghost didn't come in the
23 house and whack her in the head with it, so we can exclude

1 that. And that's kind of what we get into when we talk about
2 all doubt.

3 But we may have to present to you, because we've got
4 two competing inferences, one is that she threw it up and hit
5 her on the head, and the other is my son was swinging it
6 around and hit her.

7 We may be able to prove our case a little bit more
8 if there were testimony to you that my daughter has never
9 picked up the bat, she has no interest in baseball. And if
10 we find her, when she's crying, holding her head with two
11 Barbies in her hand, because she was playing Barbies as my
12 son was swinging this bat around, and now she's holding
13 Barbie in one hand and holding her head with her hand with
14 the one Barbie and she's got a Barbie in another, those are
15 facts that are important to you as a juror as to what
16 happened; correct?

17 A Right.

18 Q You'll be able to make these kind of inferences and
19 make those leaps I guess and infer certain things if the
20 evidence is presented to you?

21 A I believe so.

22 Q All right. One of the other things that we
23 sometimes talk about is the credibility of witnesses in a

1 criminal case. And that's really kind of what your job is,
2 to test all these inferences and you test all these
3 credibilities and say, boy, that just didn't make any sense
4 what they're telling me. Or that just doesn't fly with me.
5 I have to have more than that. Or maybe I have enough.

6 Let's go back to our example out here on Park and
7 High Street. And it's a traffic accident. We're trying a
8 traffic accident. And let's say the guy is coming north on
9 Park Street and another guy is coming west on High, and the
10 guy going west on High, he has the green light. He goes
11 through it. And the guy coming up on Park Street, he blows
12 through the light down here at Market Street and he blows
13 through this light. They're both red. He smacks into the
14 guy and now the guy is injured. Now we're here in court.

15 Do you believe that we could present and prove to
16 you beyond a reasonable doubt that the guy who was driving
17 north on Park Street caused the accident with just one
18 witness, if that witness was good enough?

19 A Yes.

20 Q All right. And on the other side of that coin, do
21 you believe that even if we presented to you five witnesses,
22 those witnesses, those witnesses may have, may have such
23 little credibility that you couldn't find him guilty?

1 A Yeah.

2 Q We may have five guys stumbling out of Maddigan's
3 down the street and they're drunk and not wearing glasses and
4 not paying attention, and maybe they're even related to the
5 defendant. And they'll come in and say, no, it was green.
6 He had the green light. Our buddy Mike had the green light.

7 So you would agree that that's the kind of thing you
8 have to do as a juror. You have to look at who has a bias,
9 an interest in the case. Who was in the best position to see
10 something or do something; right?

11 A Right.

12 Q And those are all things that weigh into your
13 decision as to whether someone is guilty or innocent beyond a
14 reasonable doubt; correct?

15 A Right.

16 Q All right. One of the other things that we talk
17 about sometimes is, you've probably seen this if you read
18 anything about a crime, or heard anything on television or
19 the radio about a crime. Sometimes, do you ever find
20 yourself saying, how dumb is this person when they get
21 caught? And I can give you a whole list of examples. But
22 I'm assuming you've heard of John Wayne Gacy I think was his
23 name. And he killed a lot of kids I think in the Chicago

1 area. And these people, he buried them under his house.
2 They were buried in his yard at his house. And you kind of
3 say to yourself, well, how dumb that is. He would lure them
4 off the streets in the darkness of the night, he would take
5 them to his house where he lived alone and he would kill
6 them. And then instead of taking them 50 miles away and
7 dumping them in a garbage pit or taking them to Lake Michigan
8 and throwing them into Lake Michigan, he would burry them in
9 his own yard. So he sort of caught himself; right? And
10 you're familiar with defendants doing that; right?

11 A I guess.

12 Q You've heard of that? You've heard of a situation
13 like that? So you wouldn't find it unbelievable if a
14 criminal defendant, as best as they may have tried to hide
15 things, actually did something stupid and left the gun with
16 their fingerprints right at the murder scene? Things like
17 that happen. Or the bank robber who goes into the bank,
18 writes a ransom note to the teller and says, give me all the
19 money or I'll blow your brains off. And she gives him the
20 money. And he goes out. And the teller flips the note over
21 and it's got the, a letter addressed to the guy at his own
22 home address. And the police go there and he was there
23 counting the money. Those things happen; right?

1 A Yeah.

2 Q And whether it's the fact that people aren't good at
3 being criminals or the fact that maybe they wanted to get
4 caught, those kinds of things happen. And you're familiar
5 with those?

6 A Okay.

7 Q Sometimes people just do dumb things and they get
8 caught. Do you have any questions that you feel that you
9 have about this process?

10 A (Witness shakes head negatively.)

11 Q Do you feel that you will be able to make the
12 inferences on circumstantial evidence if you can exclude
13 other inferences, and you feel that if it's a reasonable
14 inference you can make that inference even if we don't have
15 maybe a direct eyewitness to something, if it's a reasonable
16 inference you can do that?

17 A Yeah.

18 Q Do you feel that you can decide this case without
19 sympathy to either the victim or the state of Ohio, and
20 without sympathy to the Defendant?

21 A Yes.

22 Q You feel that you could determine this case beyond a
23 reasonable doubt, not just all doubt but a reasonable doubt?

1 And you feel that if, if the facts warranted it and the law
2 permits it and we prove our case beyond a reasonable doubt
3 that the aggravating circumstances, if we get to that second
4 phase, outweigh the mitigating factors, you could sign a
5 piece of paper calling for the death penalty of this
6 Defendant?

7 A Yes.

8 Q Okay. Thank you very much.

9 EXAMINATION

10 BY MR. INGRAM:

11 Q Are you ready?

12 A (Witness nods head affirmatively.)

13 Q How are you?

14 A Okay.

15 Q John Juhasz and I share the responsibility of
16 representing Donna Roberts who's on trial for her life. And
17 as I'm sure you can imagine, we take our responsibilities
18 very seriously.

19 And we feel we should take every reasonable
20 precaution in selecting a fair-minded jury, the same type of
21 jury that you or I would want if we were on trial; does that
22 sound fair enough to you?

23 A Yes.

1 Q When you walked in this afternoon you appeared to be
2 a whole lot nervous. And as you're sitting here now you
3 don't seem to be much less nervous. Are you a little
4 uncomfortable?

5 A I'm not used to having any kind of responsibility
6 like this, so it makes me a little uncomfortable.

7 Q Well, this process is a lot like a job interview.
8 But when you got the job you have, you chose to go apply for
9 it?

10 A Right.

11 Q In this case somebody spun the jury wheel, you were
12 lucky or unlucky enough, depending upon how you look at it,
13 that your name was drawn, and we summoned you to come talk to
14 us.

15 This is the only opportunity that we can talk to one
16 another and determine whether you're comfortable sitting on
17 this jury. And it really should be a conversation.

18 Although, you know, lawyers are trained to monopolize
19 conversations. So why don't you try not to let me do that?

20 A Okay.

21 Q When there's something you would like to say, if you
22 have a question, you have a comment, or you just want to tell
23 me anything, you stop me and tell me what you wish to

1 discuss. Okay?

2 A Okay.

3 Q And inevitably during our conversation I'm going to
4 ask you a question which simply doesn't make sense to you.
5 When that happens it's my fault, not yours. What that means
6 is that I have, once again, in my indubitable fashion, failed
7 to make myself clear. So whenever I ask you a question that
8 just seems a little convoluted to you, because lawyers can do
9 that, let me know and I'll do my best to rephrase the
10 question.

11 A Okay.

12 Q We're interviewing you today for one of the most
13 important jobs there is, the job of finding the truth and
14 determining the fate of another human being. And you've
15 already commented that that's a big responsibility.

16 My first question to you is, how do you feel about
17 being asked to undertake that responsibility?

18 A I don't know. I don't really feel much one way or
19 the other, I guess.

20 Q Do you think you're up to that responsibility?

21 A I think so.

22 Q In a nutshell, this case boils down to the
23 government's allegation that Donna Roberts plotted or

1 conspired with a male companion, Nate Jackson, to cause the
2 death of Robert Fingerhut.

3 Donna and Robert were divorced but they continued to
4 work with one another at the Greyhound Bus Stations in
5 Youngstown and Warren, and to live with one another in
6 Howland Township.

7 This trial is only about one person, and that person
8 is Donna Roberts. There's no one else sitting at the defense
9 table as a defendant. We're here only concerning the guilt
10 or innocence of Donna Roberts; do you understand that?

11 A Yes.

12 Q Throughout the course of these proceedings you will
13 hear the name Nate Jackson. And you may conclude that Nate
14 Jackson did what the State says he did. Your responsibility
15 as a juror in this case is to determine whether Donna helped
16 him do that. Whether she was -- there's fancy legal words --
17 a complicitor, aider and abettor. You're here simply to
18 determine whether she helped him. Does that make sense to
19 you?

20 A Yes.

21 Q In support of its allegation that Donna aided or
22 participated in the death of Robert Fingerhut, the State will
23 elicit some letters and some tape-recorded conversations

1 which are sexually explicit in nature and, to be candid with
2 you, may be offensive. You understand that the allegation
3 here is murder, not loose morality?

4 A Yeah.

5 Q And even if you are offended by the sexually
6 explicit nature of some of this evidence, your job
7 responsibility will require you to test that evidence to
8 determine whether it ties Donna to this offense. Are you up
9 to that?

10 A (Witness nods head affirmatively.)

11 Q Would you have the courage to acquit, that is vote
12 not guilty, if you felt a not guilty verdict was warranted by
13 the evidence?

14 A Yes.

15 Q When you came on Tuesday, April 8th, the Judge I
16 think asked you, the jury commissioner asked you to sign a
17 piece of paper where you promised that you would do your best
18 to avoid news media coverage.

19 A Right.

20 Q And the Judge will repeatedly tell you when you're
21 called that you're to do your best to avoid all exposure to
22 publicity, whether it's in the newspaper, the radio or TV.
23 Now that sometimes is hard to do. You know if you're driving

1 down the street and the news comes on, you don't know what
2 they're going to say?

3 A Right.

4 Q But if you hear something, you would have to shut
5 the radio off or change the channel for a reasonable period
6 of time. Or if you're sitting at home watching TV and
7 something comes on the news, you would again either have to
8 shut it off or change the channel. Do you understand that?

9 A That's fine.

10 Q I want to explain to you why. In the last week we
11 have been inundated, besieged with publicity regarding the
12 arrest of a Scott Peterson for the death of his wife, Laci
13 Peterson in California. Have you seen any of that, heard any
14 of that?

15 A As unbelievable as it may seem, I don't read the
16 newspaper and I don't watch the news.

17 Q Well, let's go to another example. Awhile back
18 there was a notorious trial in this country in California
19 where the defendant had the name O.J. Simpson.

20 A Uh-huh.

21 Q And whether you saw any of this or not, I think we
22 can still make our point. Every night on the evening news
23 programs they would have a highfalutin prosecutor sitting in

1 one chair, they would have a highfalutin defense lawyer
2 sitting in another chair. And depending upon their
3 perspective, that prosecutor and that defense lawyer would
4 put a different spin or a different interpretation on that
5 day's occurrences in the Simpson trial. Do you see why a
6 juror, jurors should not be exposed to that kind of
7 commentary?

8 A Right.

9 Q And that's why we ask you to avoid publicity. So
10 all we can ask is that you do your best. Will you do your
11 best?

12 A Yes.

13 Q And even the jury is told to keep an open mind until
14 the case is over. And that may be easier said than done.
15 But if you listen to the first witness and you make up your
16 mind about some fact, let's say at issue -- and I'm making
17 this up. At issue is whether a car was red or blue. And
18 witness No. 1 says the car was red. And that sounds pretty
19 good to you. You say, okay, the car was red. Well, that
20 might affect the way you listen to the testimony of witness
21 two, witness three or witness four. And they may testify
22 that the car was blue or green. So you have to keep an open
23 mind until everything is done. And, again, that may be

1 easier said than done. But all we can ask of you is that you
2 do your best. Will you do your best?

3 A Yes.

4 Q And if you're selected for this jury you're going to
5 be here with, well, 12 out of -- no, there would be more than
6 12 here. But the jury is 12 and then there's some
7 alternates. And more than likely you guys aren't going to
8 know one another. So the only thing you're going to have in
9 common is what unfolds in this courtroom. And since it's the
10 only thing you have in common, it's natural that that's what
11 you want to discuss, because it is the common thread that
12 holds you all together. Am I making sense to you?

13 A Yeah.

14 Q The Judge is going to tell you that you can't do
15 that. You can't talk about this case with your fellow jurors
16 until the case is over.

17 Now, again, all we can ask is that you do your best.
18 And will you do your best to do that?

19 A Yes.

20 Q And a lot of people have stood up here and asked you
21 your views about punishment, the death penalty, life in
22 prison. Well, I have a concern about that. And let me try
23 to explain myself. My concern is that because we all, the

1 Judge, the prosecutor, me, we're standing up here asking you
2 questions about punishment, that you may conclude in your
3 mind that we're predicting you're going to have to decide the
4 question of punishment. Is that clear to you?

5 A I don't know. Are you asking me a question or are
6 you telling me something?

7 Q I'm trying to tell you something. Probably not
8 doing a very good job at it.

9 A I understand you said, you just don't want me to
10 think that I'm required to make a decision because you guys
11 are talking about all this?

12 Q That's part of it. I also don't want you to think
13 that anybody here thinks Donna is guilty just because we're
14 asking you about punishment.

15 A Okay.

16 Q And I will give you an old adage to maybe explain
17 the way I feel about it. It seems to me that it's a lot like
18 putting the cart before the horse. We're talking to you now
19 about punishment when I think we should be talking to you
20 about guilt or innocence; does that make sense to you?

21 A Yeah.

22 Q When you go to work or when you get up in the
23 morning to go anywhere, do you customarily put on your seat

1 belt?

2 A No.

3 Q Do you know people who do?

4 A Yes.

5 Q Do those people that put on their seat belt, do they
6 expect to be involved in an accident?

7 A No.

8 Q They put it on just in case; right?

9 A Right.

10 Q Well, I don't expect to get to a second phase, but I
11 have to --

12 MR. BECKER: I'm going to object to what
13 he expects.

14 THE COURT: Rephrase.

15 Q We have to ask you these questions now just in case.

16 A Right.

17 Q Do you understand that?

18 A Yes.

19 Q How do you feel about life imprisonment as an
20 alternative to the death penalty?

21 A It would be something I would consider.

22 Q Do you think you have a -- you read the Judge's
23 preliminary instructions before you came up here?

1 A Right.

2 Q Do you think you have a handle on the four
3 sentencing options if we ever get to a second phase?

4 A Yes.

5 Q You understand, life without parole is indeed
6 exactly what it says: Life without parole. And then there's
7 life without parole eligibility for 25 full years, and that's
8 25 full years. And then there's life without parole
9 eligibility for 30 full years. And, again, that's 30 full
10 years.

11 A Right.

12 Q Have you ever considered a political candidate's
13 views on capital punishment in determining whether or not to
14 vote for that candidate?

15 A No.

16 Q Have you ever heard someone say to you, I don't
17 believe in life imprisonment because I don't believe that we,
18 the taxpayers, should have to pay?

19 A I guess I've heard that argument before.

20 Q Do you have any opinions on that particular cost,
21 that issue, the cost issue?

22 A No.

23 Q When Mr. Becker was talking to you he asked you a

1 lot about your willingness to sign verdict forms. Do you
2 recall those questions?

3 A Yes.

4 Q If a juror in a capital case -- and it doesn't have
5 to be this case. It could be any case. If a juror in a
6 capital case gets to a second phase, there are guidelines
7 that are given to the jury. And basically you're instructed
8 that you have to weigh aggravating circumstances, that are
9 bad facts, the death specifications, against mitigating
10 factors, positive things that can be said about the
11 defendant. You understand that weighing process?

12 A Right.

13 Q You're also going to be told that the jury is the
14 sole judge of the weight of the evidence. And as a juror it
15 is your individual responsibility to arrive at your own
16 personal decision as to how much weight you give this
17 evidence; do you understand that?

18 A Yes.

19 Q So as far as the weight of the evidence, the buck
20 stops with you. You got that?

21 A (Witness nods head affirmatively.)

22 Q Do you understand that the law will never require
23 you to vote for a sentence that you do not feel is warranted

1 by the evidence?

2 A Yes.

3 Q The Pennsylvania Institute of Culinary Arts, is that
4 located on Grant Street in downtown Pittsburgh?

5 A I think so.

6 Q And that lasted 16 months?

7 A It was a year in Pittsburgh and then a four-month
8 externship.

9 Q And the externship was down in Florida?

10 A Right.

11 Q Have you ever donated any time, money or services to
12 a political campaign or issue?

13 A No.

14 Q Do you belong to any group or organization which is
15 active in any political matter?

16 A No.

17 Q In the last five years or so, have you signed a
18 petition on any public issue?

19 A No.

20 Q Do you belong to or associate with any group which
21 has crime prevention as a goal?

22 A No.

23 Q You talked with Mr. Becker about sympathy; do you

1 recall that exchange?

2 A (Witness nods head affirmatively.)

3 Q You would agree with me, would you not, that this is
4 a court of law and not a court of sympathy?

5 A Right.

6 Q I want you to understand that we ask jurors in this
7 country to do very hard things. And we ask them sometimes to
8 do things that run against our natural inclinations.

9 When you evaluate the facts of this case you should
10 do so free of sympathy for anyone; do you understand that?

11 A Yes.

12 Q So sympathy for Donna over here should not effect
13 the way you look at the evidence.

14 A Right.

15 Q It's only natural to feel sympathy for someone whose
16 life was taken. So sympathy for Robert Fingerhut also should
17 not effect your evaluation of the evidence.

18 A Right.

19 Q I say that maybe easier said than done because
20 you'll see pictorial evidence, photographs, crime scene
21 photographs. Do you ever watch C.S.I.? You'll see crime
22 scene photographs. You'll see photographs showing almost
23 point-blank gunshot wounds to Mr. Fingerhut's head, I

1 believe. You'll see coroner's photographs.

2 And it's only natural, some of that evidence may
3 evoke an emotional response from you. Whether that evidence
4 evokes an emotional response from you or not, and it may,
5 sympathy, anger, you're still going to have to test that
6 evidence and determine whether it ties Donna to this offense.
7 Are you up to that?

8 A Yes.

9 Q Did you ever read the book Presumed Innocent?

10 A No.

11 Q How do you feel about the rule of law which requires
12 that jurors presume a defendant innocent?

13 A I don't know. I, I don't know how to -- I don't
14 know what you want me to say as far as how I feel. I don't
15 really feel anything about it. I guess that's the way it
16 should be.

17 Q Okay. Well, the reason I ask that question is, I
18 know some people who would do away with that rule. And
19 actually they are some pretty good friends of mine. And
20 their point is that we have a crime problem in this country
21 and they would like the way, they would like to do away with
22 the presumption of innocence and replace it with the
23 presumption of guilt like they have in other countries. And

1 they are certainly free to have that thought. But if they
2 truly believe that way they wouldn't make good jurors in a
3 criminal case in this country. Do you agree with that?

4 A Right.

5 Q So do you have any feelings like that?

6 A No.

7 Q And let's talk about the presumption of innocence in
8 a little bit of a different way. How many years age
9 difference is there between you and your brother?

10 A Three.

11 Q While you all were growing up, if your brother was
12 accused of some type of wrongdoing, I don't know, throwing an
13 egg, toilet paper, talking out, and you felt in your heart
14 that your brother didn't do what he was accused of doing, you
15 would require evidence that he did it, whatever the
16 wrongdoing was, before you would be willing to change your
17 mind, wouldn't you?

18 A Right.

19 Q That's like the presumption of innocence. Will you
20 afford Donna Roberts the presumption of innocence throughout
21 the course of these proceedings?

22 A Yes.

23 Q Because of the presumption of innocence the State

1 has the burden of proof. The State has leveled these
2 accusations. Now, to put it bluntly, it's time to put up or
3 shut up.

4 I talked to you a moment ago about my friends who
5 would replace the presumption of innocence with a presumption
6 of guilt. They would also change the burden of proof. They
7 would make the defendant prove his or her innocence.

8 And, again, they're certainly free to think that
9 way. But if they truly think that way they couldn't, they
10 would not make good jurors in this country in a criminal
11 case. You agree with that also?

12 A Yes.

13 Q I'm not going to go through them all with you, but
14 there are four charges, and all of those charges are made up
15 of what are called essential elements. And the Judge is
16 going to define those for you. What they are, they're
17 necessary ingredients. In order to prove an offense the
18 State has the burden of proving each and every one of those
19 essential elements. And the Judge will give them to you at
20 the end of the case. That's his job. I don't want to step
21 on his toes. Okay. Will you hold the State to their burden
22 of proving each and every essential element of each offense
23 charged?

1 A Yes.

2 Q You understand that Donna is on trial for murder,
3 not for being a woman of loose moral character?

4 A Right.

5 Q And will you hold the State to prove that Donna
6 intentionally participated in the death of Robert Fingerhut?
7 That's their burden here.

8 A Yes.

9 Q Donna doesn't have to testify. And the Judge will
10 tell you if she doesn't testify you can't consider that for
11 any purpose. First of all, do you understand that?

12 A No. Could you repeat that?

13 Q Sure. Donna does not have to testify in this case.

14 A Okay.

15 Q And if she doesn't testify you can't hold that
16 against her.

17 A Okay.

18 Q Do you have any problems with that?

19 A No.

20 Q When Mr. Becker was up here, I'm not sure, did he
21 use the glass example where you fill the glass to a line on
22 top and that's reasonable doubt?

23 A (Witness nods head affirmatively.)

1 Q Well, if Donna elects not to testify, that doesn't
2 add anything to that glass; do you see that?

3 A Right.

4 Q Now, the other way of looking of that, she may
5 testify. And if she does testify you should use the same
6 rules and standards for determining her credibility or
7 believability as you use for determining the credibility of
8 the other witnesses; will you do that?

9 A Yes.

10 Q And let me give you an example. She's the Defendant
11 here; right?

12 A Yeah.

13 Q So she has an interest or a stake in the outcome of
14 this case, doesn't she?

15 A Yes.

16 Q And that's something that you would want to keep in
17 mind in determining whether or not you believe her; right?

18 A Right.

19 Q So to be uniformed about it then, if you found that
20 any other witness had an interest or a stake in the outcome
21 of the case, that's something you would also want to consider
22 in determining whether or not you believe that witness;
23 correct?

1 A Right.

2 Q Mr. Becker talked with you about why an indictment
3 is not evidence. Do you recall that discussion?

4 A (Witness nods head affirmatively.)

5 Q Did you know that grand jury proceedings were secret
6 before he talked with you?

7 A (Witness shakes head negatively.)

8 Q Do you think you have a good grip on why indictments
9 are not evidence and should not be considered as evidence?

10 A Yes.

11 Q Even though you know that, the indictment will be
12 read to you throughout the course of these proceedings. It
13 will be read and it will be referred to. What I want you to
14 understand is that, nowhere along the line is it suddenly
15 transformed into evidence; do you understand that?

16 A Right.

17 Q Part of your big job responsibilities will be to
18 determine the credibility of the witnesses. And basically
19 you're going to have to determine whether everyone that
20 testifies here in this trial is telling you the truth or not.
21 Are you up to that responsibility?

22 A Yes.

23 Q The Judge is going to give you a list of factors at

1 the end of the case that you should keep in mind in
2 determining whether you believe the witnesses. All I want to
3 know now is, will you take those factors and apply them
4 uniformly to everyone that testifies?

5 A Yes.

6 Q Then he's going to give you another factor that's
7 called the test of truthfulness that you apply in your every
8 day life. And throughout the years you've had to determine
9 whether someone, your brother, a fellow student, a friend was
10 being straight up with you or trying to hoodwink you. And
11 over the years I would imagine that you've developed a sixth
12 sense or an intuitive sense to aid you in that process?

13 A (Witness nods head affirmatively.)

14 Q It would make Richelle's job a lot easier --

15 A I'm sorry.

16 Q That's okay. But if you can, please try to respond
17 verbally. It makes her life a little easier.

18 The Judge is going to tell you that you should take
19 those tests of truthfulness that you use in your every day
20 life and apply them to each and every witness that testifies.
21 Will you also do that?

22 A Yes.

23 Q Now, the State's burden in this case is proof beyond

1 a reasonable doubt. Obviously reasonable doubt is based on
2 reason and common sense. And it is, proof beyond a
3 reasonable doubt requires that you be firmly convinced of the
4 allegations and is proof of such character that an ordinary
5 person would be willing to rely or act upon it in the most
6 important of his or her own affairs.

7 So firmly convinced, willing to rely and act upon in
8 the most important of our own affairs. He'll define it for
9 you at the end, the Judge. But that's just a preliminary
10 overview. Okay?

11 A Okay.

12 Q You've made some pretty important decisions in your
13 life, haven't you?

14 A Yes.

15 Q And sometimes when we're called upon to make
16 important decisions we make a checklist, sometimes in our
17 mind, sometimes we even do it on a piece of paper. We put a
18 line down the middle of it and we put the positives on one
19 side, the negatives on the other. Have you ever done that?

20 A Yes.

21 Q Well, for the sake of our discussion let's pretend
22 I'm buying a house.

23 A Okay.

1 Q And I write the positives on the left-hand side. I
2 need four bedrooms. It has four bedrooms. I need three
3 bathrooms. It has three bathrooms. It's in a school
4 district that I want. It's in a neighborhood that I, that I
5 like. And my wife likes the house. Those are all positives.

6 On the negative side, the house is 45-years old and
7 I just have some nagging doubts about the structural,
8 structural stability of the house. There's some plumbing
9 work that needs done, and I don't know about the plumbing
10 repairs. And I don't know whether I can afford the mortgage
11 payment. So those are the negatives. And what I'm trying to
12 make a decision, I try to strike off the negatives.

13 So in my house-buying decision I call a plumber. I
14 say, hey, come on and look at this. How much will it cost to
15 fix the plumbing? And he says \$200. And I can afford the
16 \$200 so I scratch off the plumbing negative.

17 I still have that question about the stability, so I
18 write in the purchase agreement that I want an inspection, a
19 housing inspection. I call a contractor, he comes in and
20 says, don't worry about it. This foundation is brick solid.
21 So I strike that one. I go to the bank and I say, listen,
22 can I lower the interest rates? Can I stretch the payments
23 over a longer period of time? And no matter how much I work

1 at it, no matter how much I think about it, I still have a
2 reasonable concern about whether I can afford that amount of
3 money every month. Are you with me?

4 A Yeah.

5 Q I scratched off all of those negatives except one,
6 and that negative has remained reasonable; correct?

7 A Okay.

8 Q I cannot say that buying that house is the right
9 thing for me beyond a reasonable doubt; do you understand
10 that?

11 A Yes.

12 Q And will you hold the state of Ohio to that burden
13 throughout this case?

14 A Yes.

15 Q I just want to talk to you briefly about
16 circumstantial evidence and then we'll be done. It's proof
17 of a fact by direct evidence, what somebody says they saw,
18 what somebody says they heard, what somebody says they
19 smelled, from which you can infer other reasonable facts or
20 circumstances. Does that make sense to you, first of all?

21 A Yes.

22 Q Let me give you the simplest example I can think of,
23 because I sometimes have problems with this myself. It's a

1 December night and I walk the dog at 11:00 o'clock at night
2 and there's no snow on the ground, I put the dog in the
3 house, I go to bed. I wake up at 7:00 o'clock in the
4 morning, I look out the window and there's four inches of
5 snow on the ground. I have not seen it snow, so I do not
6 have direct evidence that it snowed. But I can certainly
7 have, I certainly have circumstantial evidence that it
8 snowed, don't I?

9 A Right.

10 Q Now, this just so happens to be a Sunday morning.
11 And Sunday mornings are actually fairly important for me
12 because on Sunday mornings I'll have a cup of coffee in one
13 hand, a cigarette in the other and I'm looking out the
14 upstairs window for my newspaper. And I see the fresh snow.
15 And I also see from my neighbor to the right footprints from
16 that house to my house. And then foot -- to my front door.
17 And footprints from my front door off to the neighbor to the
18 left. From that I can infer that someone walked in that
19 snow. And because I'm anxious to get my paper, I might even
20 pile an inference upon an inference here, and if I do that I
21 may try to infer as to who made those footsteps --
22 footprints. Excuse me.

23 So I infer that it was the paperboy, which seems

1 reasonable to me, until I go to the front door and open it
2 up, expecting to find my paper, and there's my Giant Eagle
3 coupons. So you have to test all the inferences that you're
4 asked to make. And will you do that?

5 A Yes.

6 Q And do you see how you really have to test, when you
7 start piling inferences on inferences?

8 A Yes.

9 Q You recall when we were talking about your brother
10 maybe being accused of wrongdoing, if you were given
11 circumstantial evidence in that case and asked to make an
12 inference, you might look for other inferences that you could
13 reasonably make that pointed in another direction. Do you
14 see that?

15 A Yeah.

16 Q Would you do that here?

17 A Yes.

18 Q Now that you've had this occasion to talk to all of
19 us, Mr. Becker, myself, the Judge, has anything popped into
20 your mind that you would like to discuss with us, that you
21 would like to bring to our attention?

22 A No.

23 Q Now I thank you for your time and attention.

1 THE COURT: Pass or side bar?

2 MR. BECKER: Pass.

3 MR. INGRAM: Pass.

4 THE COURT: Very good. You're going to be
5 in the poll from which this jury will be selected. The
6 number that was given to you to call in, call in after 4:30
7 Friday, this Friday. Hopefully we'll be in a position to get
8 everybody back in to pick the jury next week some time.
9 You're not to discuss anything about the case, form any
10 opinion, read anything on the, in the newspaper, TV,
11 whatever, until you come back. Okay?

12 A Okay.

13 THE COURT: Let's take a ten-minute break.

14 (Whereupon, a recess was taken.)

15 * * *

16 WHEREUPON,

17 MOSELLE DICENSO

18 being first duly sworn, according to law, was examined and
19 testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q Good afternoon. How are you?

23 A I'm fine. Thank you.

1 Q You read that handout that was given to you?

2 A Yes.

3 Q You understand why we're here. The purpose of
4 talking to each of the prospective jurors individually is a
5 couple areas we have to cover. Miss Roberts is charged with
6 aggravated murder, two counts with specifications.

7 Now, under the law of Ohio just because a person is
8 found guilty of murder does not mean that they also face the
9 death penalty. Legislature has seen fit to put certain
10 situations where the death penalty becomes a possibility.

11 Now, when this trial begins of course it's like any
12 trial, the burden will be upon the State to prove each and
13 every element of the charge of aggravated murder beyond a
14 reasonable doubt. It's a pretty high standard of proof. One
15 of the highest standard of proof we have. And they also
16 would have to prove beyond a reasonable doubt the
17 specifications attached. In this case that concerns a
18 burglary and a robbery.

19 If they fail to carry that burden then of course the
20 jury would properly return a verdict of not guilty, that
21 would be the end of the trial. If they maintain their burden
22 and the jury would come back with a guilty verdict, however,
23 we would go into a second hearing at which time the

1 prosecution is called upon to present aggravating
2 circumstances. Those are reasons given to the jury as to why
3 they should consider and impose the death penalty. And the
4 jury has to balance those aggravating factors against,
5 aggravating circumstances against the mitigating factors
6 which are reasons why the jury should not consider imposing
7 the death penalty.

8 Now, the jury, in any event, in that second phase
9 has the options of the death penalty, life without chance of
10 parole, life with no chance of parole before 25 or 30 years.

11 A person who would sit on such a jury who believed
12 in an eye for an eye, if you take a life you forfeit your
13 life, that person could not follow the law and could not be
14 fair to the Defendant. You take a person who could under no
15 circumstances ever consider making that decision, even
16 considering it, that person could not be fair to the State.

17 Everyone has their own personal views on the death
18 penalty. As everything else, you're entitled to your views.
19 The reason that the questions will be asked of you this
20 afternoon is to find out if you're in the majority of the
21 population where, even though you may favor the death penalty
22 or maybe look upon it with a little disfavor, you're able to
23 give them the assurance that you can follow the law and you

1 will follow the law. And the law says if all those things
2 happen I've gone over, then the State has the right to
3 request the jury to consider the death penalty along with any
4 other penalty and under the correct circumstances where they
5 carried their burden of proof, to impose it.

6 The other area of inquiry will be about any pretrial
7 publicity, whether you've read something, have fixed
8 opinions. Many of the jurors have read something about the
9 case, which is not unusual. But it's a question of whether
10 you feel sure in your own mind that you could set aside
11 anything you may have heard and decide this case fairly on
12 the evidence that you'll receive in this courtroom. That's
13 what they'll be asking you. Okay. Mr. Bailey.

14 EXAMINATION

15 BY MR. BAILEY:

16 Q Is it pronounced Dicenso?

17 A Right.

18 Q Miss Dicenso, good afternoon. My name is Ken
19 Bailey. I'm the assistant prosecutor. And as I promised the
20 other week, I guess it's been a couple weeks ago in court,
21 I'm joined today by Chris Becker, who is another assistant
22 prosecutor. And the two of us are responsible for
23 prosecuting this particular case.

1 And this is sort of a give and take session here
2 this afternoon. We get to ask you some questions. And if
3 you have any questions that come up pertaining to what we're
4 doing, feel free to ask them. Because this is, this is the
5 one chance that we get to talk to each other until the case
6 is all over.

7 During the time, if this case goes into two phases,
8 we have to wait until the end of the second phase before, if
9 you have questions that come up to us during that time. If
10 other questions come up, you need help with something, you'll
11 have to ask the bailiff, Laurie Brown, who's not here right
12 now, or our court reporter, or the Judge, because we're not
13 allowed to have any communication with you outside the
14 courtroom, okay, after today, except to say good morning or
15 good afternoon.

16 If we run into each other in the hallway or in the
17 elevator or restaurant or something, under our rules of
18 conduct, we're not trying to be antisocial or snub you, it's
19 just that we're not allowed to communicate with you.
20 Otherwise it could result in a mistrial, and we wouldn't want
21 to do that.

22 A Okay.

23 Q And we're asking questions regarding your prior

1 experiences, your opinions about different things not because
2 we're snoopy and we like to pry into people's backgrounds and
3 stuff, but rather, to make sure that the folks who are
4 selected to sit on this jury can be fair and impartial to
5 both sides, both to the Defendant and to the people of this
6 State.

7 A Okay.

8 Q There aren't any right answers. There aren't any
9 wrong answers to these questions. Just open, candid answers.

10 Now I'm going to ask you questions initially, first
11 regarding pretrial publicity, and second regarding the death
12 penalty as a punishment, then we'll get into some other
13 questions. First let's get to this issue of pretrial
14 publicity. Okay. I noticed that you read the Tribune and
15 you pretty much follow all Cleveland news, Channel 3, NBC up
16 in Cleveland, WKYC, is it?

17 A Yes.

18 Q And you indicated that you had read the first
19 article because you live in Howland?

20 A Right.

21 Q What do you recollect reading about this case?

22 A Just that there was a murder.

23 Q Okay. Now, did you follow anything regarding this

1 case or the case involving the other fellow?

2 A No, not after the first day.

3 Q Did you, if it hit headlines, did you just ignore
4 the headlines or what did you do?

5 A I don't always read the paper. I'm not much of a
6 relaxing kind of person. So a lot of nights by the time I'm
7 done with whatever I'm doing I don't even open it.

8 Q Okay. What about your family, would they discuss
9 any of this with you?

10 A No, not really. My children are both gone and my
11 husband reads the paper and usually falls asleep.

12 Q I noticed you have a daughter in law school.

13 A Right.

14 Q What type of law is she pursuing?

15 A She's in her first year. She hasn't decided.

16 Q Now, so you really don't have very much knowledge
17 about this case except to know it's a murder case?

18 A Right. I don't.

19 Q Now, the Judge instructs you that you're not to read
20 the newspaper or watch TV regarding this case. If anything
21 comes on TV you either walk out of the room or turn it down
22 or something. Or if the newspaper comes, you can have your
23 husband save the papers for you, which might be kind of

1 interesting, and I'll explain why in a minute.

2 But as you look around the courtroom, we don't have
3 anybody from the news media here right now. There was a
4 reporter here a few minutes ago but he didn't stick around
5 for this. And it may well be during the course of the trial
6 as we get into testimony in a couple of weeks that the
7 newspaper reporters will come in and sit for a little while,
8 and then they'll go to another courtroom or somewhere else in
9 the county. And the TV crews, they'll come in. They're not
10 allowed to film the jurors, but they'll come in for a few
11 minutes and they'll take some pictures of the Judge or us or
12 the Defendant, or witnesses. And then they'll do a feature
13 on that day. And they may have something for 30 seconds or
14 for a minute or something like that. And the reporters will
15 write stories.

16 Now, the interesting thing about that is, they're
17 going to have written a story missing everything that
18 happened before they got in here with all the questions that
19 were asked and the answers and everything that was asked and
20 answered after they left here, okay, which would put an
21 unusual slant on the story, perhaps, especially if the
22 testimony turned out to be something totally different from
23 when they were here. And sometimes the editor that puts the

1 headlines on, the headlines may bear no relation to the story
2 itself. And they don't do that intentionally. It's because
3 they rush to get it into the air or into print and sometimes
4 you get a misimpression based on what they report.

5 And it may well be, if you have your husband save
6 the newspapers for you and you sit on this case you're going
7 to look at it afterwards and say, you know, gosh, I sat in
8 Judge Stuard's courtroom for a week and a half or two weeks
9 during the course of the trial and I remember the testimony.
10 And I'm reading these newspapers now after it's all over.
11 And whoever that reporter was he must have been reporting on
12 that case in Judge McKay's court, not Judge Stuard's court.

13 So to keep that misinformation away from you, we ask
14 you to ignore the media and to make your decision based
15 totally on what happens here in this courtroom starting out
16 with a clean slate.

17 It may well be that during the course of the
18 testimony you may recollect having read something in the
19 paper in the initial article, but you'll put that aside and
20 make your decision based on what happens here. Sort of like
21 going back to school or starting over with a new course;
22 right?

23 A Right.

1 Q You make your decisions based on the testimony, the
2 evidence and the Judge's instructions of law. Okay.

3 Now, so much for pretrial publicity. Now let's get
4 into the issue of the death penalty as a punishment. I was
5 looking at your questionnaire, and you indicated that you
6 thought, you weren't really sure about the death penalty as a
7 punishment. You said it's sort of a case-by-case basis. And
8 I notice you're Catholic, and the church has taken a position
9 against the death penalty as a punishment; right?

10 A Right.

11 Q I notice you go to church I believe every week;
12 right?

13 A I do.

14 Q You're active in the church?

15 A Uh-huh.

16 Q Committee. You help people. And, but you think
17 that the death penalty might be appropriate for crimes
18 against children?

19 A I sometimes think that it's not right. But then --

20 Q The death penalty?

21 A Right. But then I think if someone did something to
22 my children or my mother, my husband, I would feel different.
23 But then everyone, everyone is someone's son or father or --

1 so if everyone felt, you know, you could only do it if it's
2 mine, that that wouldn't be appropriate. So there has to be
3 a time when I guess I feel that it is. But I can't just say,
4 yes, I am for it or, no, I'm not, unless you tell me all the
5 circumstances. I couldn't give you an answer one way or
6 another.

7 Q We can't tell you all the circumstances.

8 A I know.

9 Q But what we need to do -- I think you agree that
10 it's important that both sides get a fair shake in this
11 trial?

12 A Absolutely.

13 Q And you read that handout downstairs?

14 A Yes.

15 Q And the Judge has talked to you a little bit about
16 what happens in this type of a case. And not every case is a
17 death penalty case. Every murder isn't a death penalty
18 murder case. It's unusual. It's only in the most severe
19 cases. And the Legislature writes the law.

20 And in Ohio the Legislature has written the law in
21 such a way that if a person commits a crime called aggravated
22 murder, and attached to that charge is a specification, and
23 that's a fancy word for an extra finding of fact for a jury

1 to consider. But there are these two specifications attached
2 to two different counts of aggravated murder. There's only
3 one killing, one dead body, but there are two different
4 theories in this case. One is an aggravated murder with
5 prior calculation and design. And there's a second theory of
6 aggravated murder, felony murder, that it occurred during the
7 course of aggravated burglary or aggravated robbery. Okay?

8 And the State is allowed to pursue two different
9 theories. And we've elected to do that. That's proper under
10 the law. But if the jury comes back with the charge of
11 guilty beyond a reasonable doubt of aggravated murder and one
12 of these specifications, these special findings, that the
13 aggravated murder was committed with prior calculation and
14 design, and it occurred in the course of an aggravated
15 burglary, and there's a second one, that the aggravated
16 murder was committed with prior calculation and design, and
17 it occurred in the course of an aggravated robbery, if you
18 find the Defendant guilty beyond a reasonable doubt of the
19 aggravated murder and one or more of these specifications,
20 then we would move to a second phase that would make the
21 Defendant eligible for the death penalty as a punishment.

22 And you read that four possible punishments that you
23 can consider. And you should consider them initially all

1 equally. The death penalty; the sentence of life in prison
2 with no eligibility for parole; life with parole eligibility
3 after 30 full years, and; life with parole eligibility after
4 25 full years.

5 But let's say, you understand in the first phase the
6 issue is guilt or non guilt, and we have to prove certain
7 elements of the crime. We'll talk more about that later.
8 But there are certain essential key component parts of each
9 crime, like the ingredients in a recipe. And the burden is
10 on us, the people of the State, to prove those things beyond
11 a reasonable doubt.

12 And in the first phase, dealing with guilt or non
13 guilt, as to whether we can prove it, punishment has no part
14 there. The first phase is tried like any other criminal
15 case, any other jury trial in this state. The jury makes a
16 decision with no concern for punishment. If the jury makes
17 that finding of guilty of agg. murder and one or more of
18 these specifications, we then move to the second phase.

19 In that second phase you have a different issue.
20 The issue of guilt having already been decided, the issue now
21 becomes, what's the appropriate punishment for this Defendant
22 for this crime? And then you have to do a balancing test.
23 You can hear the same evidence or maybe some new evidence.

1 Different evidence in a second phase. And on one side of the
2 scale, on this balancing test you have the aggravating
3 circumstance or circumstances that you would have found in
4 the first phase, okay, these special findings. On the other
5 side of the scale are what we call mitigating factors. And
6 mitigating factors, we don't know what they are at this
7 point. I would have no way of guessing at them for you. But
8 these are things that work in a defendant's favor that
9 mitigate against the imposition of the death penalty. And
10 then you have to decide if the aggravating circumstance or
11 circumstances outweigh beyond a reasonable doubt the
12 mitigating factors. And if they do, then the appropriate
13 punishment under the law is the death penalty. Okay?

14 And at that point you and the other jurors, if you
15 found that way, that we proved that, met our burden of proof,
16 you would then return a verdict with that recommendation of
17 the imposition of the death penalty. You would not go on to
18 the other three life factors. Okay?

19 Now, for a defendant in a case like this to have
20 somebody come in on a jury and say, well, the way I
21 personally feel is that if somebody commits a crime, like
22 aggravated murder with one or more of the specifications, and
23 the charge here is a killing that occurred with prior

1 calculation and design, there was some planning that took
2 place, and the charge that it was a killing that occurred for
3 insurance money and for the theft of a car, and for somebody
4 to come in and say, well, somebody who commits a premeditated
5 murder or a murder with prior calculation and design for
6 profit, I would automatically impose the death penalty, that
7 wouldn't be fair to the Defendant; right?

8 A Right.

9 Q Because it's not an automatic punishment. Because
10 you wouldn't have heard anything in the second phase at that
11 point about mitigating factors, because mitigating factors
12 aren't relevant in the first phase.

13 Now, by the same token, if somebody couldn't return
14 a death penalty verdict in the second phase, then it wouldn't
15 be fair to the people of the State. That's why we ask you
16 these questions, for you to seek your mind, search your mind
17 and your heart and determine whether or not you could return
18 a verdict for the death penalty in a second phase, if we got
19 to that point. And it's not easy to decide. It's not easy
20 to answer. But it's the only chance we get to ask you that.
21 Because if we went through this whole trial and we went for
22 another couple of weeks and we went through two different
23 phases and then we got to that point and we said, gosh, I sat

1 through this whole trial. We found the Defendant guilty of
2 aggravated murder with one or more of the specifications, and
3 we did this balancing test that the Judge said, and we found
4 that the State met its burden of proof that the aggravating
5 circumstance or circumstances outweigh the mitigating factors
6 beyond any reasonable doubt, so the appropriate punishment
7 here is the death penalty. But now I get to this point, I
8 just can't sign the verdict form. I mean, I believe that
9 maybe the death penalty should be appropriate in some cases,
10 but I just can't partake in it. We would never know that and
11 we wouldn't be getting our fair shake in court; right? So
12 it's important that we ask people these questions to
13 determine that. And you're the only one who knows the
14 answer; right?

15 A I don't know if I know the answer, though.

16 Q Okay. Well, let's, let's discuss it. If you can
17 have a say in designing the criminal justice system, let's
18 say you sat on the Legislature, would you include the death
19 penalty as a possible punishment for any crimes?

20 A Probably.

21 Q For which crimes?

22 A Probably anything against children. I mean, I just
23 think that is the worst.

1 Q Okay. What if it wasn't a crime against children.
2 What if it was a murder-for-profit against an adult?

3 A Probably if it was, you know, malicious and, like
4 you said, preplanned. I don't know. I honestly don't know.
5 I'm just trying to be honest. I don't know.

6 Q Now, with your religion, your church has taken a
7 position against the death penalty; right?

8 A Uh-huh.

9 Q Would you be able to make your own decision
10 different from what the church says?

11 A Yes, I think so.

12 Q So that wouldn't be a problem for you?

13 A I don't think so.

14 Q Now, your view that it, the death penalty is
15 appropriate in certain crimes, how long have you held this?

16 A All my adult life.

17 Q Is there anything that led you to that decision?

18 A Probably having children and making life be more
19 precious.

20 Q Are there any crimes that you became aware of over
21 the years that made you think about the death penalty as a
22 punishment?

23 A No, not specifically.

1 Q Has the issue of the death penalty as a punishment
2 ever come up in discussions where you've been present, maybe
3 in church or maybe in, maybe at work or at home or with your
4 children or husband?

5 A My husband believes in the death penalty. My
6 daughter who's in law school does not. My other daughter
7 just doesn't have, she doesn't get into that. It's, so
8 that's not, you know.

9 Q Okay.

10 A But we don't have any discussions about it.

11 Q Do you think people should be held accountable for
12 their actions?

13 A Oh, yes.

14 Q Now, when we talk about this weighing procedure,
15 this balancing test, you have to decide, you're going to have
16 to weigh these different things. But you understand it's up
17 to you and the other jurors how much weight you want to give
18 to these factors or circumstances.

19 You may find that certain circumstances may weigh a
20 whole lot, like maybe a ton or something, 50 pounds or
21 something. On the other hand, there may be something that's
22 presented to you where you think it has about as much weight
23 as a feather. So it's entirely up to you and the other

1 jurors how much weight you want to assign to each of these
2 things. You wouldn't have any problem with that?

3 A I don't think so.

4 Q Let's say -- let me get to the hard questions.

5 A All right.

6 Q Let's say we get to the end of the first phase,
7 okay, and we've convinced you beyond a reasonable doubt --
8 and we'll talk about that term in a little bit. But let's
9 say you're convinced beyond a reasonable doubt that we've met
10 our burden of proof. We proved the elements of the crime
11 charged and we proved the elements of the specifications
12 beyond a reasonable doubt, so you're firmly convinced to a
13 moral certainty as to the truth of the charge, the elements
14 of the charge. Okay. Would you be able to sign a verdict
15 form finding the Defendant guilty in that case in the first
16 phase --

17 A If --

18 Q -- knowing that, finding her guilty of the crime of
19 aggravated murder with one or more of these specifications
20 would make her eligible for the death penalty in the second
21 phase? Or do you think that your feelings about the death
22 penalty as a punishment, or your uncertainty about it would
23 substantially affect your ability to sign that verdict form?

1 A You're asking me to tell you something that I
2 haven't experienced. I just can't, without knowing about it,
3 I just can't tell you one way or the other.

4 Q Let me put it this way. We've had a number of folks
5 come in here who strongly believe in the death penalty as a
6 punishment, and then they come down to it and they've thought
7 about it and they say, you know, gosh, I'm in favor of the
8 death penalty intellectually as a punishment, I believe it
9 has a place in society for various reasons, whether it's
10 punishment, deterrence, or whatever, but they've told us that
11 they personally can't take part in that process because when
12 it came right down to it, they didn't think they could sign
13 the form, either in the first phase or sometimes in the --
14 well, usually in the second phase but sometimes in the first
15 phase it would effect their ability to sign that verdict form
16 when we've met our burden of proof, and they said they
17 wouldn't be able to follow the law in that case because of
18 that.

19 And that's why I'm pushing you a little bit to
20 search your mind and your heart and really think about it,
21 because I imagine you've been thinking about it since you
22 found out this was a death penalty case; right?

23 A Right.

1 Q So you've had the last two and a half weeks to think
2 about it; right?

3 A Right.

4 Q And you're the only person who really knows
5 yourself, because we're just meeting for that. So if I ask
6 you again, do you think it would substantially interfere with
7 your ability to sign a guilty verdict in the first phase
8 knowing that it would make her eligible in the second phase,
9 do you think that that would effect you?

10 A I don't know. I mean, I'm just trying to be honest.
11 I just don't know.

12 Q Let's get to the really hard question, the second
13 phase. Let's say we've made it to the second phase, you and
14 the other jurors have found her guilty in the first phase of
15 aggravated murder and the specifications beyond a reasonable
16 doubt. We go to the second phase. You're presented with
17 different things and you do the balancing test. And you say,
18 the State has met its burden beyond a reasonable doubt, the
19 aggravating circumstance or circumstances outweigh these
20 mitigating factors, so under the instructions of law from the
21 Court you have to come back with the death penalty verdict.
22 Do you think that you would be able to sign that verdict form
23 for the death penalty?

1 A It would just depend on what I had heard. I just
2 can't tell you without, you know, knowing. And I know that
3 puts you in a bad place because you wouldn't know which way I
4 would go.

5 Q We're not asking you to consider the actual facts of
6 the case now.

7 A I know. But how can you say that you can or can't
8 if you don't know what's gone on in the case?

9 THE COURT: Can I?

10 MR. BAILEY: Sure.

11 THE COURT: Ma'am, the question is, and I
12 understand, I'm sure that we all understand what you're
13 saying. It's pretty difficult for us to ask you at this
14 point. The bottom line is, are you in your mind of such a
15 nature that you could not consider the death penalty or you
16 at least know that if you did consider it, under no
17 circumstances could you participate in such a verdict? Or is
18 it something that you are able to consider under the right
19 circumstances if the State proves its case that you wouldn't
20 rule it out?

21 A No, I wouldn't rule it out.

22 THE COURT: That's where I think you're
23 going.

1 MR. BAILEY: I'm sorry. I missed what the
2 answer was.

3 A I wouldn't say that I would rule it out.

4 Q You wouldn't rule out the death penalty?

5 A No.

6 Q And if, if we convinced you, assuming that whatever
7 the facts were, you're convinced that the death penalty is
8 the right punishment under the law. Okay. We've met your
9 criteria that it's, it's, you know, the burden of proof,
10 we've met that, you're assuming that, and the Judge has given
11 you instructions of law, could you then follow the law and
12 sign that verdict form?

13 A I don't know. If I really believe that all of the
14 circumstances were there, I guess I could.

15 Q Well, assume -- okay. Assume that the aggravating
16 circumstances outweigh the mitigating factors, we've
17 convinced you of that beyond a reasonable doubt, and the
18 Judge instructs you that in that case, if we prove beyond a
19 reasonable doubt that the aggravated circumstance outweighs
20 the mitigating factors, then you must come back with a death
21 penalty verdict; you would be able to sign that form?

22 A I think so.

23 Q Okay. And if you're asked, "Is that your verdict,"

1 in open court by the Judge, you would be able to say yes?

2 A If I, yeah, if I believed that you have proven it
3 without a doubt.

4 Q Let me ask you something. You attend the Blessed
5 Sacrament Church, right, in Howland?

6 A Yes.

7 Q Do you know Paul Monroe?

8 A No.

9 Q He's a police chief up there now, and he attends
10 that church. You don't know him?

11 A I do know one police. What's he look like?

12 Q He looks kind of young.

13 THE COURT: Just recently made police
14 chief.

15 A Was he a police officer before?

16 Q Yes.

17 A Okay. I think I know. He's thin?

18 Q Yeah. How well do you know him?

19 A I don't. I mean, I just, I know if it's this man
20 one time a boy was harassing my daughter and he came to our
21 house and that is -- if that's him. I don't even remember if
22 that's what his name was.

23 Q Okay. Assuming it was him, were you satisfied with

1 the way he handled the situation with the boy and your
2 daughter?

3 A Well, he didn't really handle it. It kind of just
4 stopped.

5 Q The fact that you might know him, would that affect
6 your ability to --

7 A No.

8 Q -- listen to his testimony and judge it the way you
9 would the testimony of any other witness in this case?

10 A No.

11 Q Now let me get off this death penalty issue and get
12 back to some regular questions here. Okay. We were talking
13 about the elements of the crimes. And do you understand the
14 Defendant here is charged as a complicitor, somebody who
15 helps another person or aids and abets another person or
16 solicits or procures another person to commit a crime. That
17 she's not the trigger, she's not charged as the trigger
18 person in the crime but rather as somebody who planned with
19 another fellow, Nate Jackson. And that the charge is that
20 this Nate Jackson is the person who actually committed the
21 killing, that he's the person who actually trespassed in the
22 residence, that he's the person who actually committed the
23 aggravated robbery, stole the car and had the working gun.

1 Okay.

2 The fact that she's charged as a complicitor,
3 somebody aiding in the planning of an aggravated murder,
4 would that bother you in such a way that you wouldn't be able
5 to decide this case based on the evidence?

6 A No.

7 Q You understand under Ohio law a person can be
8 charged and be eligible for the death penalty as a punishment
9 as a complicitor?

10 A Right.

11 Q If the person acts with prior calculation and design
12 and meets the other elements. Now, I had mentioned that each
13 crime has certain elements, like the ingredients in a recipe,
14 like if you were baking a cake. And the burden is on us to
15 bake that cake, put in all the ingredients. And if we don't,
16 if we leave one out you've got to find her not guilty of that
17 particular charge. You consider each crime and its elements
18 separately.

19 And there are four crimes that are charged here.
20 Two counts of aggravated murder, one with prior calculation
21 and design. And one with felony murder, it occurred during
22 an aggravated burglary and aggravated robbery. And the Judge
23 is going to instruct you at the end of this case as to the

1 elements of the crimes. And you're bound to follow his
2 instructions.

3 I'm going to give you a for instance, though. The
4 crime of aggravated murder with prior calculation and design.
5 Let's say, for instance, we have to prove certain key
6 essential component parts of that crime. They happened on or
7 about a certain date. Let's say December 11th, 2001. Second
8 would be that it happened in Trumbull County, Ohio. We call
9 that venue. And we have to prove that. And we ask that
10 question, you may get tired of, what county and state did
11 this occur, so that we can try the case in this courthouse
12 rather than up in Ashtabula County or over in Cyahoga or
13 Tuscarawas.

14 Third: Identification. That the person who's, who
15 committed this crime is the person who is sitting over there.
16 And somebody is going to have to point her out. Okay.

17 The fourth element is that she did it purposely,
18 basically on purpose. But the Judge will give you a detailed
19 legal definition of that term.

20 Fifth: That she caused the death of a living
21 person, in this case a fellow by the name of Robert
22 Fingerhut.

23 And sixth: That she did it with prior calculation

1 and design, which requires some advanced planning. Sort of
2 like the old type of premeditated murder that we used to talk
3 about in Ohio, but it's a little different. It's not a
4 momentary action like if I drop my pen and I caught it by
5 reflex, that wouldn't count. But if I dropped my pen and I
6 looked down and said, oh, my goodness, I dropped my pen,
7 maybe I better bend down and pick it up, and I planned and
8 did it, you know, that requires some planning and
9 forethought; right?

10 A (Witness nods head affirmatively.)

11 Q Each of these crimes is composed of these particular
12 elements, and we have the burden of proving these elements by
13 proof beyond a reasonable doubt. It's a high burden of proof
14 in the law. And folks hear that term, proof beyond a
15 reasonable doubt, and sometimes folks say, well, gosh, I want
16 it proved 100 percent, or I want it beyond all doubt or
17 beyond a shadow of a doubt. You understand that's not our
18 burden of proof.

19 It's sort of like a box, and we have to fill that
20 box with evidence, enough to convince you of the truth of the
21 charge to a moral certainty when you use your reason and your
22 common sense. That box -- there are different types of
23 cases. In a civil case whoever fills that box just over

1 halfway is going to win. Okay. But in a criminal case we
2 got to fill it pretty close to the top. Not all the way to
3 the top. We don't have to have 100 percent proof. You used
4 to work as a bank teller; right?

5 A Right.

6 Q As a bank teller you're used to juggling down to the
7 last penny; right?

8 A Yes.

9 Q Everything has to balance. Not so in a criminal
10 case. Okay. In a criminal case we don't have to balance to
11 the last penny. We have to do it with enough evidence so
12 that you're firmly convinced of the truth of the charge.
13 Okay. And that line would, you would have to draw a line
14 maybe on the box how full you want it to be where you're
15 satisfied personally with that amount of evidence. For every
16 person on that jury it may be at a different point, but it's
17 going to be pretty close to the top of the box.

18 That term, proof beyond a shadow of a doubt, that's
19 a nice Alfred Hitchcock movie but it doesn't exist in
20 criminal law. So you understand, you wouldn't force us to a
21 higher burden of proof than what the Judge instructs, would
22 you?

23 A No.

1 Q Now, there's also a concept here, the presumption of
2 innocence. You understand that the Defendant is presumed to
3 be innocent of these charges, as are all other defendants
4 tried in this courtroom. And that presumption of innocence
5 acts like a cloak shielding her all through the course of
6 this trial. And that stays with her, under our system of
7 justice, all the way until the end of this case. Until
8 you're back in the jury room deliberating with the other
9 jurors and you get together and you decided that we presented
10 enough evidence to convince you beyond a reasonable doubt of
11 the elements of the crime. Okay. And if so, then that
12 presumption of innocence would be gone; right?

13 A Right.

14 Q You understand that there are different types of
15 evidence that we can use to prove the elements of the crimes
16 in a criminal case. There's something called direct
17 evidence. That's where a witness comes in and testifies from
18 what he or she has learned through the use of his or her five
19 senses. For example, I heard the gunshot and it was loud. I
20 smelled the smoke and it was acrid. I touched the surface
21 and it was hot. That's one type of evidence.

22 There's another type of evidence. It's sort of a
23 roundabout type of evidence, and we call that circumstantial

1 evidence. People sometimes hear the term circumstantial
2 evidence and they think there's something wrong with it, but
3 it indicates they really don't know what it means. It's
4 where you're presented with a fact or set of facts and you
5 have to draw a logical conclusion to another fact or set of
6 facts. It's deductive reasoning. You're familiar with that,
7 right?

8 And let me give you a for instance of that. Let's
9 say that you live in a two-story house and you go to bed at
10 night, and you look out your bedroom window all over the
11 neighborhood and as far as you can see it's a beautiful
12 night. The moon is beaming. The stars are twinkling above.
13 And it's dry as far as you can see across all the rooftops
14 and all the streets.

15 You draw the blinds, get into bed, and before you
16 fall asleep you hear on the radio the announcer saying
17 there's a cold front coming in and there's going to be a
18 storm. And sometime after that you fall asleep. Then
19 sometime later you're awakened in the middle of the night.
20 You look toward the window and a flash of light from outside,
21 and a couple seconds later there's a distant bombing sound in
22 the sky.

23 And a couple, half a minute later there's another

1 big flash of light outside and a closer-in-time booming
2 sound. And suddenly there's a great big ripping flash of
3 light outside. You can't see what it is because the blinds
4 are closed. And then right above the house a second later or
5 almost instantly there's a big ripping booming crack and
6 pitter patter on the roof and a steady drumming sound, and
7 you fall back asleep.

8 And sometime later you awaken and you go to the
9 window, open the blinds and look out. It's a beautiful day
10 outside. The sun is beaming. And there's not a cloud in the
11 sky. But the streets are running with water. Drops of water
12 are dripping down from the leaves of the trees. It's flooded
13 outside. There's no fire hydrant outside for anybody to hit
14 it and knock water all over the neighborhood.

15 You know what happened during the night, don't you?
16 What happened?

17 A It rained. It stormed.

18 Q Right. There was a thunderstorm. And you know that
19 beyond any reasonable doubt, don't you?

20 A Yes.

21 Q You didn't see the rain with your own eyes. You
22 didn't see the flashes of lightening. But based on all the
23 other circumstances and the facts that were presented, you

1 know that that's what happened.

2 A Yes.

3 Q And you, there's some limitations for it. You don't
4 know how long the storm lasted or how much rain fell. But
5 the issue, the issue is was -- what happened? You know there
6 was a thunderstorm; right?

7 A Right.

8 Q Now, there's room in there for some possible or
9 imaginary doubt. You can imagine that some time during the
10 night Alf and his martian buddies flew by in a flying saucer,
11 put on a sound and light show, sprinkled the ground with some
12 wet stuff, but that would be a foolish or imaginary doubt,
13 wouldn't it?

14 A Uh-huh.

15 Q Now, there's a reason for us being able to use
16 circumstantial evidence. Okay. It's just as good as direct
17 evidence, maybe better sometimes.

18 MR. INGRAM: Objection.

19 THE COURT: What is your objection?

20 MR. INGRAM: To the "may be better."

21 Circumstantial --

22 Q At least as good.

23 MR. INGRAM: Well, that's the legal --

1 THE COURT: Rephrase it.

2 Q Okay. Circumstantial evidence has, is, can weigh
3 the same as direct evidence, right. And you understand you
4 can find somebody guilty if we prove the elements of the
5 crime charged by circumstantial evidence alone.

6 And there's a reason for us being allowed to use
7 circumstantial evidence. You would expect in a serious
8 crime like an aggravated murder, most criminals don't go out
9 on the courthouse steps at noon and announce to the whole
10 world that they're planning to kill somebody; right?

11 A Right.

12 Q And so the State is allowed to look at different
13 facts and circumstances in coming to what a person's intent
14 was. Okay. And it may well be, we can use circumstantial
15 evidence if we have things like letters or phone calls;
16 right?

17 A Right.

18 Q To show what was in a person's mind when they were
19 planning something. You understand that all criminals are
20 not necessarily all rocket scientists. They're not the
21 brightest people.

22 For example, a stickup artist goes to a bank and
23 hands the teller a note. You're familiar with cases where

1 he's handed a note over, it says, "Give me all the money."
2 And he gets the money, runs out, leaves the note behind. And
3 if you turn the note over there's his name and address on the
4 back of the envelope; right?

5 A Right.

6 Q Or the burglar who climbs in the house and steals
7 something and drops his wallet and leaves it behind with his
8 identification. So some criminals might be really, really
9 stupid; right?

10 A Right.

11 Q And they get caught. Now, a couple other things.
12 Because we're lawyers and we go, we went to law school, we're
13 sort of geared and trained to prove the elements of the crime
14 charged. And there may be some questions that you might have
15 that we never ask. Okay.

16 For example, let's say you had an interest in shoes
17 like my wife. My wife might have 30,000 pairs of shoes or
18 something like that. And if you sold shoes or collected
19 shoes you might wonder what somebody was wearing at a certain
20 time. Okay? But it may not be relevant to proving the
21 elements of the crime, and that question never gets asked
22 during the course of the trial. And if you determine it has
23 no bearing on proving the elements of the crime, then we've

1 met our burden of proof beyond a reasonable doubt as to the
2 elements. You can return a conviction even though you may
3 have certain unanswered questions; right?

4 A Right. If I feel that you've proved --

5 Q Proved?

6 A What she -- yes.

7 Q Okay. You're also stuck with the questions that we
8 ask. Sometimes in Court TV or different shows different
9 jurisdictions across the United States, they may allow jurors
10 to submit questions to judges and have the judge ask the
11 questions. But that doesn't happen here in Ohio.

12 In our jurisdiction you're stuck with the questions
13 that we ask or what we don't ask. And you have to pay very
14 close attention to the testimony. And the reason for that is
15 that there aren't going to be any instant transcripts. Just
16 like when we were young and you listened to the radio. We
17 used to listen real close to the Soaps on radio or dramas?

18 A No.

19 Q You never listened to the radio?

20 A We always had TVs since I can remember.

21 Q Gosh, you're younger than I am. Let me think.

22 Okay. Well, you understand that like in the O.J. Simpson
23 case they might have had instant transcripts because they had

1 a million dollars worth of the recording equipment and lots
2 of stenographers. We have our court reporter. Richelle
3 might be excellent, but she's not going to be able to get out
4 instant transcripts. And when the jury asks, can we have the
5 testimony of so and so, the Judge is going to say no. You've
6 got to rely on your collective recollection. Because there
7 were 12 of you, and you'll remember the testimony. So that's
8 why it's so important to pay close attention to the
9 testimony.

10 You also can't take notes because it's felt that if
11 jurors take notes it would distract from their ability to pay
12 attention to what the witness is saying. They might be
13 writing one thing down and missing the next thing the witness
14 says. And they won't be able to watch the witness's body
15 language or their face or their demeanor. So that's why you
16 can't take notes. There aren't any instant replays like on
17 TV, not like a football or baseball game or something else.

18 You're also not allowed to go out and investigate on
19 your own. Sometimes -- we had one case where a juror did
20 that and the case was declared a mistrial. And I think
21 they've done that in one or two movies, maybe on Matlock
22 where they went out and investigated. That would cause a
23 mistrial. That's a no, no. You can't do that.

1 A Okay.

2 Q Now, at the end of this case you're going to be
3 sequestered at the end of the first phase, the jury goes out
4 to deliberate. And each jury is different. Some juries come
5 back, depending on the case, I've had juries come back in an
6 hour and a half in the first phase; some juries have taken up
7 to five days. There's no telling how long it will take.

8 However long it takes, you'll take that time. But
9 you'll be sequestered during that time. You can't go out
10 into the community except, you'll be kept together as a
11 group. You'll go to the hotel. You'll go out for meals.
12 You will only discuss the case when you're all together, all
13 12 of you. But there's that period of time.

14 And let's say we get into a second phase. You and
15 the other jurors have found the Defendant guilty, let's say
16 of aggravated murder and one or more of the specifications,
17 and we move to a second phase. There would be a break in
18 between. Maybe up to a week or something. And we get into
19 the second phase. And that usually would last maybe one to
20 three days, and then you would be sequestered again. And
21 again, it depends on, each jury is different, how long it
22 takes in a second phase.

23 Would that sequestration cause you any undue

1 inconvenience or hardship?

2 A No.

3 Q Now, during the course of the trial, as you come
4 face to face with the Defendant and as her chair is turned
5 toward you, you're going to become more acquainted with her.
6 And my question to you is this: When you go inside that jury
7 room to deliberate on your verdict with the rest of the
8 jurors, can you lay aside all thoughts of sympathy whatsoever
9 you might have for the Defendant and base your decision
10 solely on the testimony and evidence presented and the
11 instructions of law given to you by the Judge and lay aside
12 all thoughts of sympathy?

13 A Yes.

14 Q Do you have any problems, pressing problems at home
15 or work that are going to effect your ability to concentrate
16 on the evidence?

17 A No.

18 Q Now, I take it you would agree with me that we have
19 certain obligations as citizens in this country. For
20 example, if it's election time we try to learn as much as we
21 can about the candidates and the issues and cast a ballot;
22 right?

23 A Uh-huh.

1 Q And if it's war time, then we have an obligation to
2 serve in the military. And we have young people overseas
3 right now in a number of countries; right?

4 A Right.

5 Q Another obligation is, if we're summoned in as
6 jurors to serve, if we're able, even though it might cause
7 some hardship on our daily life, would you be able to
8 undertake that obligation of citizenship to serve on this
9 jury in the most serious of criminal cases?

10 A Yes.

11 Q And be fair and impartial to both sides and follow
12 the law?

13 A Yes.

14 Q Okay. Thank you. I've got one more question here.
15 You indicated you got called here before for jury service
16 about --

17 A Less than two years ago.

18 Q What kind of case was it?

19 A I wasn't seated on the jury. It was a criminal
20 case.

21 Q Criminal case. Do you know who the prosecutor was?

22 A Yeah. A black gentleman.

23 Q Stan Elkins or Rodger Dixon?

1 A Rodger Dixon.

2 Q Do you remember what kind of case it was?

3 A Something with JC Penney's, but I didn't get that
4 far.

5 Q Did you go through a general selection process?

6 A Yes. But Rodger used to work for my husband when he
7 worked at Delphi so the other attorney let me go.

8 Q Okay. Is there anything, was that an interesting
9 process?

10 A Yes.

11 Q Did they ask as many questions or --

12 A No. He started off pretty much with, that he used
13 to work for my husband and did my husband ever talk about
14 him. And I didn't have a clue what he was talking about.
15 But just a few questions and then they dismissed me.

16 Q Okay. Thank you very much. Now the defense
17 attorney is going to have an opportunity to talk to you.

18 THE COURT: Ma'am, you have the option.
19 Do you want to stay until about a quarter after or come back
20 tomorrow? It's up to you.

21 A I can stay. It's fine.

22 EXAMINATION

23 BY MR. JUHASZ:

1 Q Miss Dicenso, how are you doing?

2 A Fine. Thank you.

3 Q Before we start, do you need a break? Do you want
4 some water, anything like that?

5 A No. Thank you.

6 Q I'll try to get you out of here as quick as I can.
7 My name is John Juhasz. That's Jerry Ingram over there. And
8 Jerry and I are representing Donna who, as you know from
9 everything you've heard, is on trial for her life.

10 So it's a pretty serious business we're engaged in.
11 And that's the reason why we take this time, even though I
12 know it's a time-consuming process. That's the reason that
13 we do it is because it's so serious.

14 We are really in essence interviewing you for a job,
15 kind of a short term job but a job nonetheless of deciding
16 whether or not Donna is guilty. And if she's guilty, what's
17 the appropriate penalty. And so really what we're trying to
18 do is get a fair-minded jury like I'm sure you or I would
19 want if we were in the situation sitting over there. Seem
20 okay to you?

21 A Right.

22 Q Tell me if you can remember, please, April the 8th,
23 the first day you were called here down in Judge Logan's jury

1 room, did you hear any discussions about the case? You've
2 been asked about the articles. And we're going to talk about
3 that just for a minute. But another aspect of this is
4 discussions you may have heard. Did you hear anybody talking
5 about the case down there that day?

6 A In Judge Logan's?

7 Q Yes.

8 A I wasn't -- I was in your --

9 Q I'm sorry. Forgive me. It was that courtroom. We
10 were using Judge Logan's courtroom because it was bigger.
11 Judge Stuard was there; right?

12 A No, no.

13 Q I know that you said that you read an article when
14 the case first came out, and that's because you live in
15 Howland and it was a murder in Howland; correct?

16 A Uh-huh.

17 Q From that article or from anything else which you
18 may have heard, did you hear any discussions in Howland, for
19 example, people talking about the murder of somebody who
20 lived in Howland?

21 A No.

22 Q No. Do you remember hearing Mr. Fingerhut's name?

23 A Just, I read it in the first article.

1 Q When you read it in the paper?

2 A Yes.

3 Q Did you know, not necessarily that you were
4 acquainted with him, but did you know who Mr. Fingerhut was?
5 When you read that name did you say, oh, that's the guy?

6 A No.

7 Q Before you got your jury summons, did you know that
8 Donna Roberts had been charged in connection with his death?

9 A I think I did.

10 Q Okay. If you remember -- and these questions, I
11 should tell you, are, we only want you to do the best that
12 you can, whatever you can remember. And certainly always
13 tell us the honest answer and not something that we want to
14 hear. So from what you can remember, how did you learn that
15 information?

16 A I honestly don't remember.

17 Q This case is essentially the government's allegation
18 that Donna and another fellow by the name of Nathaniel
19 Jackson -- does that name ring a bell with you or does it
20 not?

21 A When I filled the questionnaire, I filled it out the
22 day I received it and I did not, and I wrote no. But after I
23 thought about it, I thought it must be the gentleman that was

1 with her. But I did not know until after that, what he had
2 even, the sentence he had even received. But someone I work
3 with did tell me that.

4 Q Okay. So that had to be between now -- I'm sorry --
5 between the day that you got the questionnaire and today?

6 A Right.

7 Q And tell me for a second about that. If I'm
8 understanding -- and don't let me put words in your mouth. I
9 just don't want this to take all day so you don't get home at
10 9:00 o'clock. Since you got the questionnaire you, you saw
11 the name Nathaniel Jackson on there obviously?

12 A Right.

13 Q You did not at that time know what the name was?

14 A I did not.

15 Q And I assume, I'm taking a leap here so stop me if
16 I'm wrong, that you talked with somebody at work and, about
17 the fact that you were going to be on the jury, and that, and
18 the name Nathaniel Jackson came up? Or did you mention the
19 name?

20 A No, no. I filled out the questionnaire that day.
21 And the, a person that I work with knew, because I had to
22 take off work to come here, and he said something about, "He
23 was convicted and given the death penalty." But until that

1 day I did not know --

2 Q You did not know?

3 A -- what sentence he got.

4 Q All right. Anything else that person told you
5 about?

6 A No.

7 Q About Nathaniel Jackson? About Donna Roberts or
8 anything else?

9 A No.

10 Q From those things, that is, from the newspaper
11 article that you read early on, from this conversation you
12 and I have just talked about, do you have any impression now
13 that Donna is probably guilty, must be guilty?

14 A I don't know.

15 Q Mr. Fingerhut, the fellow who died, and Donna had
16 been divorced but they continued to live together in Howland.
17 And they continued to work together at the Youngstown
18 Greyhound Bus Station -- I'm sorry. The Youngstown/Warren
19 Greyhound Bus Stations. And the government's allegations are
20 essentially that Mr. Jackson and Donna got together and
21 planned Mr. Fingerhut's murder and carried it out. All
22 right.

23 Now, you and I have already talked about

1 Mr. Jackson. Okay. And you've heard about the fact that he
2 was sentenced. And obviously that means that he was
3 convicted; correct?

4 A Uh-huh.

5 Q And I think you've already said, based on that you
6 don't really know yet whether she is guilty or not; correct?

7 A Correct.

8 Q And that's principally because you haven't heard any
9 evidence; right?

10 A Right.

11 Q And that's really what I want to make sure with you,
12 is that her trial is separate from his trial; you understand
13 that?

14 A Yes.

15 Q And even if the State was successful at that trial
16 in proving that he participated in Mr. Fingerhut's killing,
17 this trial is about whether Donna participated with Mr.
18 Jackson; do you understand that?

19 A Correct.

20 Q Now, we think that as part of what the State is
21 going to offer as evidence to attempt to convince you that
22 she participated will be some letters written by Donna and
23 some phone conversations. And I'm going to tell you up front

1 that those recorded phone conversations are sexually
2 explicit. Really offensive at points.

3 The reason I bring that up is, if you hear that type
4 of evidence, that may cause you to have a negative impression
5 about Donna, about her person, about her morals, about her
6 ethical standards. Do you appreciate that? Because that may
7 run contra to how you feel people should conduct themselves.
8 Are you with me on that?

9 A Uh-huh.

10 Q And my question is, if you hear that type of thing
11 and if you draw those negative inferences about her, you
12 understand that's still not evidence of her guilt?

13 A Yes.

14 Q You may not like somebody. You may think that they
15 live their life-style in a fashion completely unacceptable to
16 you. But I guess what I need from you is an assurance that
17 that won't substitute for proof of her guilt. And can you
18 give me that assurance?

19 A Yes, I can.

20 Q I appreciate that. Now, one of the things that we
21 talk to people about, because this is a death penalty case,
22 is the death penalty. And I want to assure you, we're not
23 going to go down the road that you've been already because a

1 part of what we do I think as lawyers is, because we're
2 trying to find out if somebody can serve on a jury, sometimes
3 we ask them to do the impossible. We bring you in here.
4 There are rules and procedures you're not familiar with and
5 we ask you how might you act in a certain situation.

6 I was, as I was listening to you I had a thought
7 that, you know, if today you said to me well, look, suppose
8 when you leave the courthouse today, Juhasz, there's a guy
9 standing out there who's got a gun and says, give me all your
10 money, what would you do? Well, I've never been in that
11 situation. I might like to say, well, I would grab my
12 briefcase and I would smack the gun out of his hand and I
13 would call Captain Bacon to arrest him. But the truth is, I
14 don't know because I've not been in that situation.

15 A Exactly.

16 Q And I sense that's where you're at.

17 A That's exactly right.

18 Q There's only a couple things that I want to talk
19 then about the death penalty, and I promise we'll leave it
20 alone. The first is I want to make certain that you at least
21 have a working knowledge of how a death penalty case works.
22 In other words, you understand the State would have to
23 convince you at the first phase, like any other criminal

1 trial, that the person was guilty; correct?

2 A Correct.

3 Q Not only of the murder but of the extra findings
4 that you have to make in order to go to a second phase. You
5 understand all that?

6 A Right.

7 Q And then at the second phase you would be asked to
8 do this weighing process. All right. The only thing I would
9 like to find out from you are a couple things. First of all,
10 I assume that you can recall -- this isn't going to be a
11 test. But you have clear in your mind what the four
12 penalties are?

13 A Yes.

14 Q I assume there's nothing about how you feel about
15 the death penalty that would cause you either to go into that
16 second phase, if you got there, with one of those penalties
17 sort of having a leg up? Or conversely, that you would
18 refuse to consider any penalty; am I reading you correctly
19 about that?

20 A Yes.

21 Q Okay. And the burden would still be on them to
22 prove, if they could do that, that those aggravating
23 circumstances outweigh the mitigating factors?

1 A Right.

2 Q All right. So all four of those, you can have an
3 open mind about all four of those penalties; correct?

4 A Right.

5 Q The other thing I would like to make certain that
6 you understand is, that while the Judge can tell you, listen,
7 you have to weigh the reasons to impose the death penalty
8 against the reasons not to, nobody can ever tell you that you
9 have to assign a particular weight to any of those factors;
10 do you understand that?

11 A Uh-huh.

12 Q And the law will never require you to vote for any
13 sentence that you don't feel is warranted by the evidence,
14 you appreciate that?

15 A I do.

16 Q Do you have any thought that because we're talking
17 to you now about the death penalty before -- as we've already
18 said. You haven't even heard the evidence about whether or
19 not Donna did this -- that she must be guilty and we're going
20 to get to that phase?

21 A No.

22 Q You appreciate the fact that we have to talk to
23 jurors about everything that might possibly happen in a case?

1 A Yeah.

2 Q I heard you talk to Mr. Bailey, and I read in your
3 questionnaire about your being called for prior jury duty. I
4 assume there's nothing about that situation that gave you a
5 bad impression about the Court system that would make you not
6 want to participate in this case?

7 A No.

8 Q You have probably heard before the phrase taking the
9 Fifth, have you?

10 A Yes.

11 Q And I think just like the TV and the movies do with
12 a lot of things that we do here in courtrooms, they sort of
13 misportray that. Because a lot of times if you say he's
14 taking the Fifth, it's some guilty guy sitting there with his
15 lawyer saying, I'm taking the Fifth, meaning I'm not going to
16 say anything that's going to get me in trouble because I'm
17 already in enough trouble. That is part of the Fifth
18 Amendment.

19 But basically the Fifth Amendment says you don't
20 have to do anything if you're the person accused of a crime
21 to help the government. The government makes allegations
22 against you. They have to prove them if they can. Okay.
23 Any problem presuming Donna to be innocent as you sit here?

1 A No.

2 Q I mentioned a few minutes ago that one of the things
3 that we do is we bring folks down here and we sort of expect
4 them to play our ballgame by our rules without them really
5 having had much prior initiation. Although the Judge will
6 give you at the close of the case, as he would in any other
7 criminal case, a definition of proof beyond a reasonable
8 doubt, I'll give you a hint and tell you that there are no
9 numbers in there.

10 In other words if, you know, they have 12 witnesses
11 it's enough; if they have 11, it's not. There's nothing like
12 that. So I like to talk to jurors about the idea that you
13 have sort of an imaginary box. And when you start out the
14 trial the box is empty. You've heard about the concept of
15 proof beyond a reasonable doubt. It's the highest standard
16 of proof we have in our law. So you as a juror, nobody can
17 tell you where to draw that line, but because it's the
18 highest standard of proof somewhere near the top of that box
19 you're going to draw a line called reasonable doubt.

20 The reason I like to talk about that in conjunction
21 with this Fifth Amendment is, because of the way the Fifth
22 Amendment works, it isn't that they win if the verdict is
23 guilty and she wins if the verdict is not guilty. It's

1 really that they either win or they lose; do you see that?

2 A Uh-huh.

3 Q Because they either have to pour enough evidence
4 into that box to convince you that it's filled up beyond that
5 line called reasonable doubt. And if they do, the verdict is
6 guilty. Or if they failed to put enough evidence in there,
7 even though you may look in the box and see, well, there's
8 some evidence. I don't know if I really like what's going on
9 here, but they didn't prove it to me beyond a reasonable
10 doubt, then they didn't meet their burden. And you have no
11 problem holding them to that burden?

12 A No.

13 Q And out of abundance of caution, and forgive me for
14 repeating myself, sympathy, or if you're upset at the
15 Defendant because of something she wrote in a letter or said
16 in a phone conversation, those things don't substitute for
17 the government's evidence in that box; do you see that?

18 A (Witness nods head affirmatively.)

19 Q Because of this Fifth Amendment thing that we've
20 been talking about the corollary of that is, the logical
21 extension is that since the Government either has to win the
22 case or lose it, the Defendant doesn't have to take the
23 witness stand and she doesn't have to put on evidence if she

1 doesn't want to. She doesn't even have to have her lawyer
2 ask questions of the government's witnesses if she doesn't
3 want to; do you appreciate all that?

4 A Uh-huh.

5 Q That runs a little bit contra to what most of us
6 usually do when we're trying to decide something fairly,
7 which is to hear both sides. So having said all that, if in
8 this case Donna decides not to take the stand, would you hold
9 that against her? Or do you understand, it's simply a
10 question of whether the Government convinces you or not?

11 A I understand.

12 Q Ditto for, if she decides not to call witnesses.
13 Besides not taking the stand herself, maybe she says, I'm not
14 going to call any other witnesses. I don't think they filled
15 up the box. You would not hold that against her?

16 A Yes.

17 Q Very well. Conversely, if she does take the stand
18 you see, don't you, she's like any other witness who takes
19 the stand? You would not automatically discount everything
20 she has to say and say, well, she's a liar because she has a
21 stake in the outcome, you would not do that; correct?

22 A No.

23 Q That may be something you want to take into

1 consideration when the Judge tells you how to judge the
2 credibility or believability of witnesses. It's fair for you
3 to consider that she has a stake in the outcome. But my
4 point is, you don't just reject her testimony out of hand
5 just because she's the Defendant; correct?

6 A Right.

7 Q Along the same vein, when you're deciding the
8 believability of witnesses, I assume you would not believe
9 the testimony, for example, of a police officer simply
10 because he was a police officer?

11 A Right.

12 Q And that would also be true, by the way, if expert
13 witnesses are called. You understand your job as a juror
14 even though this person comes in and says, look, I know about
15 medicine. I know about science. And I know more about this
16 -- he might not say these words but he's going to imply, I
17 know more about it than you folks do.

18 If you, based on your reason and common sense, find
19 out that what that expert is saying just doesn't wash with
20 you, just doesn't make sense, you can reject that testimony;
21 do you understand that?

22 A I can, but I don't know how I would know more than
23 an expert.

1 Q Well, about certain things you may not. I have a
2 little silly example that I like to use. And I like to use
3 it because it combines expert testimony with things that
4 people who aren't experts know. So let's assume in my silly
5 little trial that, forget about this homicide case for a
6 second. Let's pretend that we've got some case and whether
7 it was high tide or not at a given time was material to
8 something that had to be decided. So an expert comes in, he
9 sits down in his gray pinstripe suit with his Brooks Brothers
10 striped tie and says, my name is Dr. So and so. And as they
11 go through his qualification we discovery that he's got a
12 Ph.D. in astrophysics from the Massachusetts Institute of
13 Technology, and he teaches now at Cal Tech where he's the
14 department chair of the department of astrophysics and space
15 science. And everybody is going, wow. And he gets up and
16 says, at the time involved in this lawsuit the tide was high,
17 and I can tell you that based upon two things: The position
18 of the moon, and the fact that the sun rises in the west and
19 sets in the east. Okay. Well, we all know that's not true.
20 Okay?

21 And my only point is, you are free as a juror then
22 to say, I don't care if this guy has got degrees with ribbons
23 dripping off of them, I'm not buying that testimony.

1 A Okay.

2 Q I don't know if you're familiar or not with the
3 phrase, the word indictment or how an indictment comes about.
4 Do you understand generally that a grand jury proceeding is a
5 one-sided proceeding?

6 A Uh-huh.

7 Q The reason I bring that up is, there has to be some
8 way to notify a person that the government says that you did
9 something wrong, to notify them of that. And that piece of
10 paper is called an indictment.

11 The proceeding for issuing that, a grand jury
12 hearing is a one-sided proceeding. And I bring that up only
13 to make certain that, once again, you understand that that
14 indictment, whether it's read to you once or 50 times in this
15 trial is not evidence that goes into my silly little box.
16 You appreciate that?

17 A Uh-huh.

18 Q We're almost done. We talked about proof beyond a
19 reasonable doubt in this box. Here's another way that that
20 works. If you have to make an important decision, whether
21 you do it in your mind's eye or on a piece of paper, you kind
22 of make a checklist of the pros and cons, don't you?

23 A Uh-huh.

1 Q I mean, you just don't run out and say, you know,
2 the car shop closes at 5:00. I think I can get there and buy
3 a new Mercedes. I mean, you have to stop and say, can I
4 afford this? What am I thinking? You know, those kind of
5 things.

6 It's the same thing with reasonable doubt. You have
7 to make a checklist, again, whether you want to on paper in
8 the jury room or in your mind's eye, on one side will be all
9 the reasons why the government is going to tell you that the
10 Defendant is guilty. On the other side will be doubts. And
11 those doubts will come, at least in my experience,
12 principally from three places. There will be doubts that you
13 think about as you listen to the evidence. There will be
14 doubts that the defense lawyers will point out to you during
15 the course of the cross-examination or final arguments. Or
16 there will be doubts that other jurors have come up with as
17 you sit back there and deliberate and talk about the case.

18 My point is this: You have to go through -- the
19 government does not have to prove its case beyond a shadow of
20 a doubt, beyond imaginary doubt. Mr. Bailey talked about Alf
21 sprinkling the water and all that light show and all that
22 stuff. So there's some room between that line and the top of
23 the box. And that's where imaginary doubt and possible doubt

1 reside. But they have to prove the case beyond reasonable
2 doubt.

3 So what you, in essence, have to do as a juror is
4 look at those doubts on that side of the checklist and say,
5 now let me think about this. Let me look at the evidence
6 again. Is this doubt based on reason and common sense? If
7 it's not, then you scratch it off of your checklist and say,
8 well, I thought that was a reasonable doubt but now that I
9 think about it and talk to the other jurors, it's not.

10 When you are done doing that for each one of those,
11 if you've got one doubt left or more than one, and no matter
12 how you talked about it with the other jurors, no matter how
13 you think about it you say to yourself, no, there's no way
14 for me to account for this doubt other than to say, this is a
15 doubt that I have based on reason and common sense.

16 Then you see, in that circumstance the State has not
17 proved its case beyond a reasonable doubt. That's a heavy
18 burden. But do you have problems holding the Government to
19 that burden?

20 A No.

21 Q Any problem if at the end of the case you find that
22 they haven't met that burden, coming out and sitting down
23 here and looking at Mr. Bailey and Mr. Becker and saying,

1 sorry, I don't think you proved your case?

2 A No.

3 Q We're going to talk about one more thing and then I
4 will not further sully a beautiful afternoon. Mr. Bailey
5 talked to you a little bit about circumstantial evidence.
6 And my experience with that is that every lawyer has what I
7 sort of call his shtick about how to talk about
8 circumstantial evidence, and here's mine. And it will just
9 take a minute.

10 I would like you to pretend for a moment that it's a
11 warm afternoon in late August and we're at my house. It's
12 one of those afternoons where the sun is shining but the wind
13 is starting to pick up, and you know there's going to be one
14 of those late afternoon thunderstorms. You're out in the
15 kitchen with me. And I'm making a glass of ice tea, when all
16 of a sudden we hear a big crash. And as I run into the
17 living room to investigate my son Mike's cat comes running
18 out between my legs.

19 I look to the left as I go into the living room and
20 there's my son Mike like this with his hands over his face.
21 I look to the right and there's, one of my wife's Norman
22 Rockwell plates has taken a tumble off the mantel, is laying
23 down in front of the fireplace on the hearth. And all the

1 king's horses and all the king's men cannot put Norman back
2 together again.

3 From those facts that I have given you, I suppose
4 circumstantially you can conclude that Mike was fooling
5 around, throwing a ball or something like that like he's not
6 supposed to do in the house, broke the plate, and he goes,
7 oh, boy, I know I've been told. I know I've been told. I
8 know I've been told. The noise scared the cat. The cat
9 takes off.

10 But maybe the cat knocked the plate off. Okay. The
11 cat knows it's in trouble and Mike's going -- well, Mike
12 could be doing several things like, you know, dad wasn't that
13 wild about me getting this cat in the first place. Or, you
14 know, the cat did it but maybe I'm going to take the fall
15 anyway.

16 Or another option could be that that breeze from
17 that approaching storm knocked the plate off and the cat and
18 Mike are both worried they're going to get blamed for it.
19 Now, here's the reason I tell that story. The State may ask
20 you to take circumstantial evidence and say, we proved our
21 case beyond a reasonable doubt. Maybe they can do that.

22 But my point is if, as in the situation I just gave
23 you, that same circumstantial evidence leads to other

1 reasonable inferences, then in that case, even though there
2 are circumstantial evidence that the State says proved its
3 case beyond a reasonable doubt, you could certainly have a
4 doubt based on reason and common sense, could you not?

5 A Yes.

6 Q And, for example, in the case I just gave you, I
7 certainly would not be able to convict my son Mike by proof
8 beyond a reasonable doubt, would I?

9 A No.

10 Q Any problem applying that same principle to any
11 circumstantial evidence you're presented in this case?

12 A No.

13 Q It's been a long day. We appreciate your patience.
14 Is there anything that's come up about which you have
15 questions or any reason why you think you cannot or should
16 not serve on this jury?

17 A No.

18 Q Thank you for your time. I appreciate it.

19 MR. JUHASZ: Thank you, judge.

20 THE COURT: Pass?

21 MR. JUHASZ: Pass.

22 MR. BAILEY: Pass.

23 THE COURT: Miss Dicenso, you will be in

1 the poll from which this jury will be selected. We would ask
2 you to call that number given to you after 4:30 Friday, this
3 Friday. Hopefully by next week we'll be able to get
4 everybody in to pick the jury.

5 I would again remind you you're not to talk with
6 anybody about the case, read anything in the newspaper or
7 watch anything on TV. And, well, you know the drill. Call
8 after 4:30 on Friday. Gentlemen, 1:00 o'clock tomorrow.

9 (Whereupon, court adjourned for the
10 evening.)

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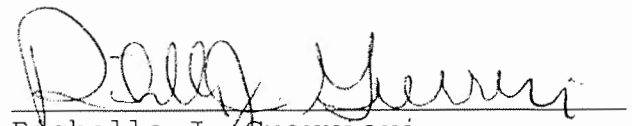
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2
3 REPORTER'S CERTIFICATE
4

5 This is to certify the foregoing represents a true and
6 correct copy of the proceedings had in the aforementioned
7 cause as reflected by the stenotype notes taken by me on the
8 same.
9

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11
12 
13 Richelle J. Guerrieri,
14 Official Court Reporter
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